(26,593)

TO

(26,601)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918.

No. 507.

E. B. SPILLER, PLAINTIFF IN ERROR,

vs.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

No. 508.

E. B. SPILLER, PLAINTIFF IN ERROR,

vs.

CHICAGO AND EASTERN ILLINOIS RAILROAD COMPANY.

No. 509.

E. B. SPILLER, PLAINTIFF IN ERROR,

vs.

CHICAGO AND ALTON RAILROAD COMPANY.

No. 510.

E. B. SPILLER, PLAINTIFF IN ERROR,

vs.

THE MISSOURI PACIFIC RAILWAY COMPANY.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 4, 1919.

No. 511.

E. B. SPILLER, PLAINTIFF IN ERROR,

vs.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY.

No. 512.

E. B. SPILLER, PLAINTIFF IN ERROR,

vs.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY.

No. 513.

E. B. SPILLER, PLAINTIFF IN ERROR,

vs.

CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY.

No. 514.

E. B. SPILLER, PLAINTIFF IN ERROR,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY.

No. 515.

E. B. SPILLER, PLAINTIFF IN ERROR,

vs.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.

	Original.	Print
Caption	*a*	1
Transcript of record from the District Court of the United States for the Western District of Missouri	1	2
Citation on writ of error sued out by the Atchison, Topeka & Santa Fe Ry. Co. and acknowledgment of service	1	2
Writ of error sued out by the Atchison, Topeka & Santa Fe Ry. Co. and clerk's return	2	2

	Original.	Print
Citation on writ of error sued out by Chicago & Eastern Illinois R. R. Co. and acknowledgment of service	3	4
Writ of error sued out by Chicago & Eastern Illinois R. R. Co. and clerk's return	4	4
Citation on writ of error sued out by the Chicago & Alton R. R. Co. and acknowledgment of service	5	6
Writ of error sued out by the Chicago & Alton R. R. Co. and clerk's return	6	6
Citation on writ of error sued out by the Missouri Pacific Ry. Co. and acknowledgment of service	7	8
Writ of error sued out by the Missouri Pacific Ry. Co. and clerk's return	8	8
Citation on writ of error sued out by the St. Louis, Iron Mountain & Southern Ry. Co. and acknowledgment of service	10	10
Writ of error sued out by the St. Louis, Iron Mountain & Southern Ry. Co. and clerk's return	11	10
Citation on writ of error sued out by the St. Louis & San Francisco R. R. Co. and acknowledgment of service	12	12
Writ of error sued out by the St. Louis & San Francisco R. R. Co. and clerk's return	13	12
Citation on writ of error sued out by Chicago, Rock Island & Pacific Ry. Co. and acknowledgment of service	14	14
Writ of error sued out by Chicago, Rock Island & Pacific Ry. Co. and clerk's return	15	14
Citation on writ of error sued out by Illinois Central R. R. Co. and acknowledgment of service	17	16
Writ of error sued out by Illinois Central R. R. Co. and clerk's return	17	16
Citation on writ of error sued out by Missouri, Kansas & Texas Ry. Co. and acknowledgment of service	19	18
Writ of error sued out by Missouri, Kansas & Texas Ry. Co. and clerk's return	20	18
Caption to transcript from U. S. District Court	21	20
Petition	22	20
Answer of the Atchison, Topeka & Santa Fe Ry. Co. in case No. 4308 in District Court	31	28
Record entry granting leave to the Atchison, Topeka & Santa Fe Ry. Co. and Illinois Central R. R. Co. to withdraw answers and to file motions to elect and demurrers	31	28
Record entry of filing of demurrers and motions to elect by Atchison, Topeka & Santa Fe Ry. Co. and Illinois Central R. R. Co.	32	28
Demurrer of Atchison, Topeka & Santa Fe Ry. Co. to petition	32	29
Record entry of overruling of demurrers and motions to elect, etc.; dismissal as to second count of petition; separate answer and stipulation waiving jury filed, etc.	41	37
Memorandum as to answer filed in case of Spiller *vs* Atchison, Topeka & Santa Fe Ry. Co., No. 4317 in District Court	42	37

	Original.	Print
Answer of the Atchison, Topeka & Santa Fe Ry. Co. in case No. 4317 in District Court	42	37
Reply to answer of St. Louis & San Francisco R. R. Co.	47	42
Stipulation waiving trial by jury and for trial of causes Nos. 4[illegible] and 4320 and for continuance of other causes	48	42
Record entry of trial, December 8, 1915	49	43
Record entry of trial, February 18, 1916	49	44
Record entry of overruling of declarations of law requested by defendants and finding in favor of plaintiffs, etc.	50	44
Judgment, Aug 16, 1916	50	45
Petition for writ of error by the Atchison, Topeka & Santa Fe Ry. Co.	55	49
Assignment of errors by the Atchison, Topeka & Santa Fe Ry. Co.	56	50
Order allowing writ of error, etc., to the Atchison, Topeka & Santa Fe Ry. Co.	61	54
Bond on writ of error sued out by the Atchison, Topeka & Santa Fe Ry. Co.	61	54
Petition for writ of error by the Chicago & Eastern Illinois R. R. Co.	62	55
Assignment of errors by the Chicago & Eastern Illinois R. R. Co.	63	55
Bond on writ of error sued out by the Chicago & Eastern Illinois R. R. Co.	68	60
Petition for writ of error by Chicago & Alton R. R. Co.	69	60
Assignment of errors by Chicago & Alton R. R. Co.	70	61
Bond on writ of error by Chicago & Alton R. R. Co.	75	65
Petition for writ of error by Missouri Pacific Ry. Co.	76	66
Assignment of errors by Missouri Pacific Ry. Co.	76	66
Bond on writ of error by Missouri Pacific Ry. Co.	81	71
Petition for writ of error by St. Louis, Iron Mountain & Southern Ry. Co.	82	72
Assignment of errors by St. Louis, Iron Mountain & Southern Ry. Co.	83	72
Bond on writ of error by St. Louis, Iron Mountain & Southern Ry. Co.	88	77
Petition for writ of error by St. Louis & San Francisco R. R. Co.	89	78
Assignment of errors by St. Louis & San Francisco R. R. Co.	90	78
Bond on writ of error by St. Louis & San Francisco R. R. Co.	95	82
Petition for writ of error by Chicago, Rock Island & Pacific Ry. Co.	96	83
Assignment of errors by Chicago, Rock Island & Pacific Ry. Co.	97	84
Bond on writ of error by Chicago, Rock Island & Pacific Ry. Co.	102	88
Petition for writ of error by Illinois Central R. R. Co.	102	89
Assignment of errors by Illinois Central R. R. Co.	103	89
Bond on Writ of error by Illinois Central R. R. Co.	108	93

	Original.	Print
Petition for writ of error by Missouri, Kansas & Texas Ry. Co.	109	94
Assignment of errors by Missouri, Kansas & Texas Ry. Co.	109	94
Bond on writ of error by Missouri, Kansas & Texas Ry. Co.	115	99
Bill of exceptions	117	100
Caption	117	100
Appearances of counsel, etc	117	101
Stipulation waiving trial by jury	119	102
Colloquy between court and counsel as to answers, etc., and that cases be tried together	120	103
Plaintiff's Exhibit 1—Supplemental report of Interstate Commerce Commission in case of Cattle Raisers Association of Texas *vs.* Missouri, Kansas & Texas Ry. Co. *et al.*, January 12, 1914	122	104
Claims against Atchison, Topeka & Santa Fe Ry. Co.	126	108
Claims against Chicago & Alton R. R. Co.	145	127
Claims against Chicago, Rock Island & Pacific Ry. Co.	145	127
Claims against Illinois Central R. R. Co.	155	137
Claims against Missouri Pacific Ry. Co.	155	137
Claims against Missouri, Kansas & Texas Ry. Co.	158	140
Claims against St. Louis & San Francisco R. R. Co.	192	174
Order of Interstate Commerce Commission, January 12, 1914	207	189
Plaintiff's offer of certain decisions of Interstate Commerce Commission and defendants' objection thereto, etc.	211	192
Declarations of law requested by defendants, ruling reserved	212	193
Memorandum as to testimony and discussion concerning attorneys' fees and that no question will be raised as to reasonableness thereof	213	194
Defendants' renewal of motion for peremptory finding	213	194
Defendants' offer of testimony taken by Interstate Commerce Commission on reparation hearings and objection thereto	213	194
Defendants' Exhibit 1—Certified copy of transcript of testimony before Interstate Commerce Commission on reparation hearings in case of Cattle Raisers Association of Texas *vs.* Missouri, Kansas & Texas Ry. Co. *et al.*	214	196
Certificate of secretary of Interstate Commerce Commission	214	196
Hearings at Chicago, September 19, 1912	219	199
Appearances of attorneys	219	199
Statement of certain facts by attorney for complainant	220	200
A. C. Williams, for complainant	221	201
Hearing at Chicago, September 20, 1912	249	229
A. C. Williams (recalled)	261	241

	Original.	Print
Hearing at Chicago, January 24, 1913	265	245
Appearances of attorneys	265	245
Hearing at Chicago, October 17, 1913	280	270
Appearances of attorneys	280	270
A. C. Williams (resumed)	283	273
Form of assignment of claims	317	297
Objections to competency, etc., of certain evidence contained in transcript of testimony and offer of Defendants' Exhibit 2, etc	327	307
Defendants' Exhibit 2—Abstract of claim of J. A. Patterson, claimant, against the Atchison, Topeka & Santa Fe Ry. Co	330	309
Abraham L. Fox, for defendants	334	312
Defendants' Exhibit 3—Letter, A. L. Fox to Judge Van Valkenburgh, December 9, 1915	337	315
Statement from Appendix A to supplemental report of Interstate Commerce Commission, claims against the Atchison, Topeka & Santa Fe Ry. Co.	338	316
Colloquy between court and counsel as to railroads in hands of receivers and as to claims against railroads	342	320
Warner S. Thompson, for defendants	344	321
C. S. Burg, for defendants	346	323
Statement by counsel for defendants as to pendency of cause No. 4320, Spiller *et al. vs.* Missouri, Kansas & Texas Ry. Co., and colloquy as to pendency of the several causes	350	326
Declarations of law requested by defendants	351	327
Colloquy with reference to Defendants' Exhibit 2, abstract of claim against the Atchison, Topeka & Santa Fe Ry. Co., etc	355	330
Demurrers by defendants to the evidence in cases Nos. 4308 and 4320	364	338
Colloquy with reference to assignment of claims in case No. 4320 and as to filing of briefs and oral argument, etc.	365	338
Rulings of the court sustaining defendants' objections to introduction of Plaintiff's Exhibits 2, 3, and 4, being certain decisions of the Interstate Commerce Commission	368	341
Certificate of judge to bill of exceptions	368	341
Stipulation of counsel as to transcript of record on writs of error from Circuit Court of Appeals	368	341
Election as to printing of record	371	344
Praecipe for transcript on writs of error	371	344
Opinion of the District Court on overruling of demurrers	373	345
Memorandum opinion of District Court on final hearing	382	353
Clerk's certificate to transcript	388	358
Proceedings in U. S. Circuit Court of Appeals	390	359
Appearance of Mr. Robert Dunlap, Mr. Thomas R. Morrow, Mr. T. J. Norton, Mr. J. W. Jamison, and Mr. C. S. Burg as counsel for plaintiff in error in cause No. 4819	390	359

	Original.	Print
Appearance of counsel for defendant in error in cause No. 4819	390	359
Appearance of Mr. Gardiner Lathrop as counsel for plaintiff in error in cause No. 4819	391	361
Appearance of counsel for defendant in error in cause No. 4820	391	361
Appearance of counsel for plaintiff in error in cause No. 4820	392	361
Appearance of counsel for defendant in error in cause No. 4821	392	362
Appearance of counsel for plaintiff in error in cause No. 4821	392	362
Appearance of counsel for plaintiff in error in cause No. 4822	393	362
Appearance of counsel for defendant in error in cause No. 4822	393	363
Appearance of counsel for plaintiff in error in cause No. 4823	394	363
Appearance of counsel for defendant in error in cause No. 4823	394	363
Appearance of counsel for defendant in error in cause No. 4824	395	364
Appearance of counsel for plaintiff in error in cause No. 4824	395	364
Appearance of counsel for defendant in error in cause No. 4825	395	364
Appearance of counsel for plaintiff in error in cause No. 4825	396	365
Appearance of counsel for defendant in error in cause No. 4826	396	365
Appearance of counsel for plaintiff in error in cause No. 4826	397	366
Appearance of counsel for plaintiff in error in cause No. 4827	397	366
Appearance of counsel for defendant in error in cause No. 4827	398	366
Order of submission in causes Nos. 4819 to 4827, inclusive	398	366
Opinion on merits in causes Nos. 4819 to 4827, inclusive	400	367
Judgment in cause No. 4819	433	398
Judgment in cause No. 4820	434	399
Judgment in cause No. 4821	435	399
Judgment in cause No. 4822	436	400
Judgment in cause No. 4823	437	401
Judgment in cause No. 4824	438	401
Judgment in cause No. 4825	439	402
Judgment in cause No. 4826	440	403
Judgment in cause No. 4827	441	403
Petition of defendant in error for a rehearing in causes Nos. 4819 to 4827, inclusive	442	411
Opinion on rehearing in causes Nos. 4819 to 4827, inclusive	492	453
Order denying petition for rehearing in causes Nos. 4819 to 4827, inclusive	494	454

	Original.	Print
Petition for writs of error from Supreme Court U. S. and assignment of errors in causes Nos. 4819 to 4827, inclusive	495	454
Order allowing writs of error from Supreme Court U. S. and fixing amount of bond in causes Nos. 4819 to 4827, inclusive	500	458
Writ of error from Supreme Court U. S. and clerk's return in cause No. 4819	501	459
Writ of error from Supreme Court U. S. and clerk's return in cause No. 4820	502	460
Writ of error from Supreme Court U. S. and clerk's return in cause No. 4821	503	462
Writ of error from Supreme Court U. S. and clerk's return in cause No. 4822	504	463
Writ of error from Supreme Court U. S. and clerk's return in cause No. 4823	505	465
Writ of error from Supreme Court U. S. and clerk's return in cause No. 4824	506	466
Writ of error from Supreme Court U. S. and clerk's return in cause No. 4825	507	468
Writ of error from Supreme Court U. S. and clerk's return in cause No. 4826	508	469
Writ of error from Supreme Court U. S. and clerk's return in cause No. 4827	509	471
Citation on writ of error from Supreme Court U. S. and acknowledgment of receipt of copy thereof in cause No. 4819	510	472
Citation on writ of error from Supreme Court U. S. and acknowledgment of receipt of copy thereof in cause No. 4820	511	473
Citation on writ of error from Supreme Court U. S. and acknowledgment of service in cause No. 4821	512	473
Citation on writ of error from Supreme Court U. S. and acknowledgment of service in cause No. 4822	513	474
Citation on writ of error from Supreme Court U. S. and acknowledgment of service in cause No. 4823	514	475
Citation on writ of error from Supreme Court U. S. and acknowledgment of service in cause No. 4824	515	476
Citation on writ of error from Supreme Court U. S. and acknowledgment of service in cause No. 4825	516	476
Citation on writ of error from Supreme Court U. S. and affidavit of service in cause No. 4826	517	477
Citation on writ of error from Supreme Court U. S. and acknowledgment of receipt of copy thereof in cause No. 4827	519	478
Bond on writ of error from Supreme Court U. S. in causes Nos. 4819 to 4827, inclusive	520	479
Praecipe for transcript on writs of error from Supreme Court U. S. and acceptances and affidavit of service thereof in causes Nos. 4819 to 4827, inclusive	522	480
Clerk's certificate to transcript	526	483

a Pleas and Proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the September Term, 1917, of said Court, Before the Honorable Walter H. Sanborn and the Honorable John E. Carland, Circuit Judges, and the Honorable Wilbur F. Booth, District Judge.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it Remembered that heretofore, to-wit: on the twenty-sixth day of October, A. D. 1916, a transcript of record pursuant to writs of error directed to the District Court of the United States for the Western District of Missouri, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in certain causes wherein The Atchison, Topeka and Santa Fe Railway Company was Plaintiff in Error and E. B. Spiller was Defendant in Error, and wherein the Chicago and Eastern Illinois Railroad Company was Plaintiff in Error and E. B. Spiller was Defendant in Error, and wherein the Chicago and Alton Railroad Company was plaintiff in Error and E. B. Spiller was Defendant in Error, and wherein The Missouri Pacific Railway Company was Plaintiff in Error and E. B. Spiller was Defendant in Error, and wherein the St. Louis, Iron Mountain and Southern Railway Company was Plaintiff in Error and E. B. Spiller was Defendant in Error, and wherein the St. Louis and San Francisco Railroad Company was Plaintiff in Error and E. B. Spiller was Defendant in Error, and
b wherein the Chicago, Rock Island and Pacific Railway Company was Plaintiff in Error and E. B. Spiller was Defendant in Error, and wherein the Illinois Central Railroad Company was Plaintiff in Error and E. B. Spiller was Defendant in Error, and wherein the Missouri, Kansas and Texas Railway Company was Plaintiff in Error and E. B. Spiller was Defendant in Error, which said transcript as prepared and printed, under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:

1 (*Citation on Writ of Error Sued Out by The Atchison, Topeka and Santa Fe Ry. Co.*)

UNITED STATES OF AMERICA, *sct:*

To E. B. Spiller, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri sixty days from and after the day this citation bears date, pursuant to a writ of error filed in the Clerk's Office of the District Court of the United States for the Western Division of the Western District of Missouri, wherein The Atchison, Topeka and Santa Fe Railroad Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, 28 day of August in the year of our Lord one thousand nine hundred and sixteen.

ARBA S. VAN VALKENBURGH, *Judge.*

UNITED STATES OF AMERICA,
Western Division of the
Western District of Missouri, sct:

I hereby acknowledge due service of the within Citation this 28 day of August A. D. 1916.

S. H. COWAN,
I. H. BURNEY,
B. F. DEATHERAGE,
GOODWIN CREASON,
Attorney- for Defendant in Error.

Endorsed: Filed in the District Court on Aug. 28, 1916.

2 (*Writ of Error Sued Out by The Atchison, Topeka and Santa Fe Ry. Co.*)

UNITED STATES OF AMERICA, *sct:*

The President of the United States of America to the Honorable Judges of the District Court of the United States for the Western Division of the Western District of Missouri, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, at the April Term, 1916, thereof, between E. B. Spiller, assignee,

Plaintiff, and The Atchison, Topeka and Santa Fe Railway Company, defendant, a manifest error hath happened, to the great damage of the said The Atchison, Topeka and Santa Fe Railway Company as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Eighth Circuit, together with this writ, so that you have the said record and proceedings aforesaid at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit, on or before the 27th day of October, 1916, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, The Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court.

Issued at office in Kansas City this 28 day of August, in the year of our Lord one thousand nine hundred and sixteen.

[Seal U. S. Dist. Court, West. Dist. of Mo., Western Division.]

JOHN B. WARNER, *Clerk*,
By —— ——, D. C.

Allowed by
ARBA S. VAN VALKENBURGH,
District Judge.

UNITED STATES OF AMERICA,
Western Division of the
Western District of Missouri, set:

3 In obedience to the command of the within Writ, I hereby transmit to the United States Circuit Court of Appeals, a duly certified transcript of the record and proceedings in the within entitled case, and with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of said District Court of the United States for the Western Division of the Western District of Missouri.

Issued at office in Kansas City, this 24th day of October, A. D. 1916.

[Seal U. S. Dist. Court, West. Dist. of Mo., Western Division.]

JOHN B. WARNER, *Clerk*,
By C. J. MURRAY, *D. C.*

Endorsed: Filed in the District Court on Aug. 28, 1916.

(*Citation on Writ of Error Sued by the Chicago and Eastern Illinois Railroad Co.*)

UNITED STATES OF AMERICA:

To E. B. Spiller, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of Saint Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the Western Division of the Western District of Missouri, wherein Chicago and Eastern Illinois Railroad Company, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 28th day of August, 1916.

ARBA S. VAN VALKENBURGH,
Judge of the District Court of the United States for the Western Division of the Western District of Missouri.

4 Service of a copy of the foregoing citation is hereby acknowledged, this 28th day of August, 1916.

S. H. COWAN,
I. H. BURNEY,
B. F. DEATHERAGE,
GOODWIN CREASON,
Attorneys for Defendant in Error.

Endorsed: Filed in the District Court on Aug. 28, 1916.

(*Writ of Error Sued by the Chicago & Eastern Illinois Railroad Co.*)

UNITED STATES OF AMERICA, *set:*

The President of the United States of America to the Honorable Judges of the District Court of the United States for the Western Division of the Western District of Missouri, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, at the April Term, 1916, thereof, between E. B. Spiller and Chicago & Eastern Illinois Railroad Company #4308, a manifest error hath happened, to the great damage of the said Chicago & Eastern Illinois Railroad Company as by its complaint appears.

We being willing that error, if any hath been, should be duly

corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Eighth Circuit, together with this writ, so that you have the said record and proceedings aforesaid at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit, on or before the 27th day of October, 1916, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

5 Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court.

Issued at office in Kansas City, this 28th day of August, in the year of our Lord one thousand nine hundred & sixteen.

[Seal U. S. Dist. Court, West. Dist. of Mo., Western Division.]

JOHN B. WARNER, *Clerk*,
By —— ——, *D. C.*

Allowed by:
ARBA S. VAN VALKENBURGH,
District Judge.

UNITED STATES OF AMERICA,
Western Division of the Western
District of Missouri, set:

In obedience to the command of the within Writ, I herewith transmit to the United States Circuit Court of Appeals, a duly certified transcript of the record and proceedings in the within entitled case, and with all things concerning the same.

In witness whereof, I hereto subscribe my name and affix the seal of said District Court of the United States for the Western Division of the Western District of Missouri.

Issued at office in Kansas City, this 24th day of October, A. D. 1916.

[Seal U. S. Dist. Court, West. Dist. of Mo., Western Division.]

JOHN B. WARNER, *Clerk*,
By C. J. MURRAY, *D. C.*

Endorsed: Filed in the District Court on Aug. 28, 1916.

(*Citation on Writ of Error Sued by the Chicago and Alton Railroad Co.*)

UNITED STATES OF AMERICA:

To E. B. Spiller, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of Saint Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the Western Division of the Western District of Missouri, wherein The Chicago & Alton Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of
6 error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 28th day of August, 1916.

ARBA S. VAN VALKENBURGH,
Judge of the District Court of the United States for the Western Division of the Western District of Missouri.

Service of a copy of the foregoing citation is hereby acknowledged this 28th day of August, 1916.

S. H. COWAN,
DEATHERAGE & CREASON,
Attorneys for Defendant in Error.

Endorsed: Filed in the District Court on Aug. 28, 1916.

(*Writ of Error Sued by the Chicago and Alton Railroad Co.*)

UNITED STATES OF AMERICA, *sct:*

The President of the United tSates of America to the Honorable Judges of the District Court of the United States for the Western Division of the Western District of Missouri, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, at the April Term, 1916, thereof, between C. B. Spiller, assignee Plff., and The Chicago & Alton Railroad Co., a manifest error hath happened, to the great damage of the said The Chicago & Alton Railroad Co., as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that

then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Eighth Circuit, together with this writ, so that you have the said record and proceedings aforesaid at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit, on or before the 27 day of October, 1916, to the end that the record and proceedings aforesaid being inspected,
7 the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court.

Issued at office in Kansas City, this 28th day of August, in the year of our Lord one thousand nine hundred & sixteen.

[Seal U. S. Dist. Court, West. Dist. of Mo., Western Division.]

JOHN B. WARNER, *Clerk,*
By —— ——, *D. C.*

Allowed by:
ARBA S. VAN VALKENBURGH,
District Judge.

UNITED STATES OF AMERICA,
Western Division of the Western
District of Missouri, ss:

In obedience to the command of the within Writ, I herewith transmit to the United States Circuit Court of Appeals, a duly certified transcript of the record and proceedings in the within entitled case, and with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of said District Court of the United States for the Western Division of the Western District of Missouri.

Issued at office in Kansas City, this 24th day of October, A. D. 1916.

[Seal U. S. Dist. Court, West. Dist. of Mo., Western Division.]

JOHN B. WARNER, *Clerk,*
By C. J. MURRAY, *D. C.*

Endorsed: Filed in the District Court on Aug. 28, 1916.

(*Citation on Writ of Error Sued Out by The Missouri Pacific Ry. Co.*)

UNITED STATES OF AMERICA:

To E. B. Spiller, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of Saint Louis, Missouri, sixty days from and after the
8 day this citation bears date, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the Western Division of the Western District of Missouri, wherein The Missouri Pacific Railway Company is plaintiff in error and you are defendant in error, to show cause, of any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 28th day of August, 1916.

ALBA S. VAN VALKENBURGH,
Judge of the District Court of the United States for the Western Division of the Western District of Missouri.

Service of a copy of the foregoing citation is hereby acknowledged this 28th day of August, 1916.

S. H. COWAN,
I. H. BURNEY,
B. F. DEATHERAGE,
GOODWIN CREASON,
Attorney- for Defendant in Error.

(*Writ of Error Sued Out by The Missouri Pacific Ry. Co.*)

UNITED STATES OF AMERICA, *sct:*

The President of the United States of America to the Honorable Judges of the Circuit Court of the United States for the Western Division of the Western District of Missouri, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you, at the —— Term, 19—, thereof, between E. B. Spiller Plaintiff and The Missouri Pacific Railway Company Defendant a manifest error hath happened, to the great damage of the said The Missouri Pacific Railway Company as by its complaint appears
9 We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you

send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Eighth Circuit, together with this writ, so that you have the said record and proceedings aforesaid at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit, on or before the 27th day of October, 1916, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court.

Issued at office in Kansas City, this 28th day of August, in the year of our Lord one thousand nine hundred sixteen.

[Seal U. S. Dist. Court, Western District of Mo., Western Div.]

JOHN B. WARNER, *Clerk*,
By —— ——, *D. C.*

Allowed by
ARBA S. VAN VALKENBURGH,
District Judge.

UNITED STATES OF AMERICA,
Western Division of the
Western District of Missouri, ss:

In obedience to the command of the Within Writ, I herewith transmit to the United States Circuit Court of Appeals, a duly certified transcript of the record and proceedings in the within entitled case, and with all things concerning the same.

In Witness Whereof, I hereto subscribe my name and affix
10 the seal of said District Court of the United States for the Western Division of the Western District of Missouri.

Issued at Office in Kansas City, this 24th day of October, A. D. 1916.

[Seal U. S. Dist. Court, Western District of Mo., Western Div.]

JOHN B. WARNER, *Clerk*,
By S. C. MURRAY, *D. C.*

Endorsed: Filed in the District Court on Aug. 28, 1916.

(Citation on Writ of Error Sued Out by the St. Louis, Iron Mountain and Southern Ry. Co.)

UNITED STATES OF AMERICA:

To E. B. Spiller, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of Saint Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the Western Division of the Western District of Missouri, wherein the St. Louis, Iron Mountain and Southern Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the United States this 28th day of August, 1916.

ARBA S. VAN VALKENBURGH,
Judge of the District Court of the United States for the Western Division of the Western District of Missouri.

Service of a copy of the foregoing citation is hereby acknowledged this 28th day of August, 1916.

S. H. COWAN,
I. H. BURNEY,
B. F. DEATHERAGE,
GOODWIN CREASON,
Attorneys for Defendant in Error.

Endorsed: Filed in the District Court on Aug. 28, 1916.

11 *(Writ of Error Sued Out by the St. Louis, Iron Mountain and Southern Ry. Co.)*

UNITED STATES OF AMERICA, *set:*

The President of the United States of America to the Honorable Judges of the Circuit Court of the United States for the Western Division of the Western District of Missouri, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you, at the —— Term, 19—, thereof, between E. B. Spiller, Plaintiff and St. Louis, Iron Mountain & Southern Railway Company Defendant a manifest error hath happened, to the great damage of the

said St. Louis, Iron Mountain & Southern Railway Company as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Eighth Circuit, together with this writ, so that you have the said record and proceedings aforesaid at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit, on or before the 27th day of October, 1916, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court.

Issued at office in Kansas City, this 28th day of August, in the year of our Lord one thousand nine hundred sixteen.

[Seal U. S. Dist. Court, Western District of Mo., Western Div.]

JOHN B. WARNER, *Clerk,*
By —— ——, *D. C.*

12 Allowed by
ARBA S. VAN VALKENBURGH,
District Judge.

UNITED STATES OF AMERICA,
Western Division of the
Western District of Missouri, set:

In obedience to the command of the within Writ, I herewith transmit to the United States Circuit Court of Appeals, a duly certified transcript of the record and proceedings in the within entitled case, and with all things concerning the same.

In Witness Whereof, I hereto subscribe my name and affix the seal of said District Court of the United States for the Western Division of the Western District of Missouri.

Issued at office in Kansas City, this 24th day of October, A. D. 1916.

[Seal U. S. Dist. Court, Western District of Mo., Western Div.]

JOHN B. WARNER, *Clerk,*
By C. J. MURRAY, *D. C.*

Endorsed: Filed in the District Court on Aug. 28, 1916.

(*Citation on Writ of Error Sued Out by The St. Louis and San Francisco R. R. Co.*)

UNITED STATES OF AMERICA:

To E. B. Spiller, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of Saint Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to a writ or error filed in the Clerk's office of the District Court of the United States for the Western Division of the Western District of Missouri, wherein St. Louis and San Francisco Railroad Company, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

13 Witness, the Honorable Edward D. White, Chief Justice of the United States, this 28 day of August, 1916.

ARBA S. VAN VALKENBURGH,
Judge of the District Court of the United States for the Western Division of the Western District of Missouri.

Service of a copy of the foregoing citation is hereby acknowledged this 28th day of August, 1916.

S. H. COWAN,
I. H. BURNEY,
B. F. DEATHERAGE,
GOODWIN CREASON,
Attorneys for Defendant in Error.

Endorsed: Filed in the District Court on Aug. 28, 1916.

(*Writ of Error Sued Out by the St. Louis and San Francisco Railroad Co.*)

UNITED STATES OF AMERICA, *set:*

The President of the United States of America to the Honorable Judges of the District Court of the United States for the Western Division of the Western District of Missouri, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, at the April Term, 1916, thereof, between E. B. Spiller and St. Louis & San Francisco Railroad Company, defendant, #4308, a manifest error hath happened, to the great damage of the said St.

Louis & San Francisco Railroad Company, as by its complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Eighth Circuit, together with this writ, so that you have the said record and proceedings aforesaid at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit, on or before the 27th day of October, 1916, to the end that the record and proceedings aforesaid being inspected,
14 the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court.

Issued at office in Kansas City, this 28th day of Aug., in the year of our Lord, one thousand nine hundred and sixteen.

[Seal U. S. Dist. Court, West. Dist. of Mo., Western Division.]

JOHN B. WARNER, *Clerk*,
By —— ——, *D. C.*

Allowed by:
ARBA S. VAN VALKENBURGH,
District Judge.

UNITED STATES OF AMERICA,
Western Division of the Western
District of Missouri, set:

In obedience to the command of the within Writ, I herewith transmit to the United States Circuit Court of Appeals, a duly certified transcript of the record and proceedings in the within entitled case, and with all things concerning the same.

In Witness Whereof, I hereto subscribe my name and affix the seal of said District Court of the United States for the Western Division of the Western District of Missouri.

Issued at office in Kansas City, this 24th day of October, A. D. 1916.

[Seal U. S. Dist. Court, West. Dist. of Mo., Western Division.]

JOHN B. WARNER, *Clerk*,
By C. J. MURRAY, *D. C.*

Endorsed: Filed in the District Court on Aug. 28, 1916.

(Citation on Writ of Error Sued Out by the Chicago, Rock Island and Pacific Ry. Co.)

UNITED STATES OF AMERICA, *set:*

To E. B. Spiller, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to a writ of error filed in the
15 Clerk's office of the District Court of the United States for the Western Division of the Western District of Missouri, wherein Chicago, Rock Island & Pacific Railway Company, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States for the Western Division of the Western District of Missouri, this 28th day of August, in the year of our Lord one thousand nine hundred sixteen.

ARBA S. VAN VALKENBURGH, *Judge.*

UNITED STATES OF AMERICA,
Western Division of the
Western District of Missouri, set:

We hereby acknowledge due service of the within Citation this 28th day of August, A. D. 1916.

S. H. COWAN,
I. H. BURNEY,
B. F. DEATHERAGE,
GOODWIN CREASON,
Attorney- for Defendant in Error.

Endorsed: Filed in the District Court on Aug. 28, 1916.

(Writ of Error Sued Out by the Chicago, Rock Island and Pacific Ry. Co.)

UNITED STATES OF AMERICA, *set:*

The President of the United States of America to the Honorable Judges of the District Court of the United States for the Western Division of the Western District of Missouri, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said Distrrict Court before

you, at the April Term, 1916, thereof, between E. B. Spiller, plaintiff, and The Chicago, Rock Island & Pacific Railway Company, defendant, a manifest error hath happened, to the great damage of the said Chicago, Rock Island & Pacific Railway Company, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Eighth Circuit, together with this writ, so that you have the said record and proceedings aforesaid at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit, on or before the 27th day of October, 1916, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

. 16

Witness, The Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court.

Issued at office in Kansas City, this 28th day of August, in the year of our Lord, one thousand nine hundred sixteen.

[Seal U. S. Dist. Court, West. Dist. of Mo., Western Division.]

JOHN B. WARNER, *Clerk*,
By —— ——, *D. C.*

Allowed by:
ARBA S. VAN VALKENBURGH,
District Judge.

UNITED STATES OF AMERICA,
Western Division of the
Western District of Missouri, set:

In obedience to the command of the within Writ, I herewith transmit to the United States Circuit Court of Appeals, a duly certified transcript of the record and proceedings in the within entitled case, and with all things concerning the same.

In Witness Whereof, I hereunto subscribe my name and affix the seal of said District Court of the United States for the Western District of Missouri.

Issued at office in Kansas City, this 24th day of October, A. D. 1916.

JOHN B. WARNER, *Clerk*,
By C. J. MURRAY, *D. C.*

Endorsed: Filed in the District Court on Aug. 28, 1916.

17 (*Citation on Writ of Error Sued Out by the Illinois Central R. R. Co.*)

UNITED STATES OF AMERICA, *sct:*

To E. B. Spiller, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to a writ of error filed in the Clerk's Office of the District Court of the United States for the Western Division of the Western District of Missouri, wherein Illinois Central Railroad Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 28th day of August in the year of our Lord one thousand nine hundred sixteen.

ARBA S. VAN VALKENBURGH, *Judge.*

UNITED STATES OF AMERICA,
Western Division of the
Western District of Missouri, sct:

We hereby acknowledge due service of the within Citation this 28th day of August, A. D. 1916.

S. H. COWAN,
I. H. BURNEY,
B. F. DEATHERAGE,
GOODWIN CREASON,
Attorney- for Defendant in Error.

Endorsed: Filed in the District Court on Aug. 28, 1916.

(*Writ of Error Sued Out by the Illinois Central R. R. Co.*)

UNITED STATES OF AMERICA, *sct:*

The President of the United States of America to the Honorable Judges of the District Court of the United States for the Western Division of the Western District of Missouri, Greeting:

18 Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you, at the April Term, 1916, thereof, between E. B. Spiller, Plaintiff, and Illinois Central Railroad Company a mani-

fest error hath happened, to the great damage of the said Illinois Central Railroad Company as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Eighth Circuit, together with this writ, so that you have the said record and proceedings aforesaid at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit, on or before the 27th day of October, 1916, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, The Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court.

Issued at office in Kansas City, this 28th day of August, in the year of our Lord one thousand nine hundred and sixteen.

[Seal U. S. Dist. Court, West. Dist. of Mo., Western Division.]

JOHN B. WARNER, *Clerk*,
By ——— ———, *D. C.*

Allowed by
ARBA S. VAN VALKENBURGH,
District Judge.

UNITED STATES OF AMERICA,
Western Division of the
Western District of Missouri, set:

In obedience to the command of the within Writ, I herewith transmit to the United States Circuit Court of Appeals, a duly certified transcript of the record and proceedings in the within entitled case, and with all things concerning the same.

19 In Witness Whereof, I hereunto subscribe my name and affix the seal of said District Court of the United States for the Western Division of the Western District of Missouri.

Issued at office in Kansas City, this 24th day of October, A. D. 1916.

[Seal U. S. Dist. Court, West. Dist. of Mo., Western Division.]

JOHN B. WARNER, *Clerk*,
By C. J. MURRAY, *D. C.*

Endorsed: Filed in the District Court on Aug. 28, 1916.

(*Citation on Writ of Error Sued Out by the Missouri, Kansas and Texas Ry. Co.*)

UNITED STATES OF AMERICA:

To E. B. Spiller, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of Saint Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the Western Division of the Western District of Missouri, wherein the Missouri, Kansas and Texas Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 28th day of August, 1916.

ARBA S. VAN VALKENBURGH,
Judge of the District Court of the United States for the Western Division of the Western District of Missouri.

Service of a copy of the foregoing citation is hereby acknowledged, this 28th day of August, 1916.

S. H. COWAN,
DEATHERAGE & CREASON,
Attorneys for Defendant in Error.

Endorsed: Filed in the District Court on August 28, 1916.

20 (*Writ of Error Sued Out by the Missouri, Kansas and Texas Ry. Co.*)

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Judge of the District Court of the United States for the Western Division of the Western District of Missouri, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, at the April Term, 1916, thereof, between E. B. Spiller, plaintiff, and Missouri, Kansas & Texas Railway Company, defendant, a manifest error hath happened, to the great damage of said Missouri, Kansas & Texas Railway Company, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid

in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Eighth Circuit, together with this writ, so that you have the said record and proceedings aforesaid at the City of Saint Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit, on or before the 27th day of October, 1916, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 28th day of August, in the year of our Lord one thousand nine hundred and sixteen.

Issued at office in Kansas City, Mo., with the seal of the District Court of the United States for the Western Division of the Western District of Missouri and dated as aforesaid.

[Seal U. S. Dist. Court, West. Dist. of Mo., Western Division.]

JOHN B. WARNER,
Clerk of the District Court of the United States for the Western Division of the Western District of Missouri.

21 Allowed by
ARBA S. VAN VALKENBURGH, *Judge.*

UNITED STATES OF AMERICA,
Western Divison of the
Western District of Missouri, set:

In obedience to the command of the within writ, I herewith transmit to the United States Circuit Court of Appeals, a duly certified transcript of the record and proceedings in the within entitled case, and with all things concerning the same.

In Witness Whereof I hereunto subscribe my name and affix the seal of said District Court of the United States for the Western Division of the Western District of Missouri.

Issued at office in Kansas City, this 24th day of October, A. D. 1916.

[Seal U. S. Dist. Court, West. Dist. of Mo., Western Division.]

JOHN B. WARNER, *Clerk,*
By C. J. MURRAY, *D. C.*

Endorsed: Filed in the District Court on Aug. 28, 1916.

UNITED STATES OF AMERICA, *set:*

Be it remembered that heretofore, to-wit, at the regular November Term of the District Court of the United States for the Western Division of the Western District of Missouri, and on the 29th day of December, 1914, a Petition was filed in the office of the Clerk of the District Court of the United States for the Western Division of the Western District of Missouri, wherein E. B. Spiller is Plaintiff and Missouri, Kansas & Texas Railway Company, et al. are Defendants.

Said Petition Filed December 29, 1914, is in words and figures as follows, to-wit:

In the District Court of the United States for the Western District of Missouri, at Kansas City.

No. 4308.

E. B. SPILLER, Plaintiff,

vs.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY et al., Defendant-.

22 *Plaintiff's Original Petition.*

Cowan & Burney, Fort Worth, Texas;
Deatherage & Creason, Kansas City, Mo.,
Attorneys for Plaintiff.

To the Honorable Judge of said Court:

I.

E. B. Spiller, plaintiff, who resides in Tarrant County, in the Northern District of Texas, at Fort Worth, complaining of the defendants, Missouri, Kansas & Texas Railway Company, the Missouri Pacific Railway Company, the St. Louis & San Francisco Railway Company, the Atchison, Topeka & Santa Fe Railway Company, the Chicago, Rock Island [*Island*] & Pacific Railway Company and the Chicago & Alton Railway Company, each of which own and operate their line of railway through the Western District of Missouri and have principal operating offices in said District at Kansas City, Missouri; and the St. Louis Iron Mountain & Southern Railway Company, the Chicago & East Illinois Railway Company and the Illinois Central Railroad Company, which have offices and agents at Kansas City, Missouri; and the Texas & Pacific Railway Company, which has its principal office and agents at Dallas, in Dallas County, Texas, represents:

II.

That the defendants are now and at the dates herein named were common carriers engaged in the transportation of cattle in connection

with other lines of railway from points in Texas, Oklahoma and New Mexico to Kansas City and St. Joseph, Missouri, St. Louis, Missouri, National Stock Yards and Chicago, Illinois, New Orleans, Louisiana and to other live stock markets, and were parties to the tariffs of rates, fares and charges constituting joint rates and through routes from the points named in Appendix A to the order of the Interstate Commerce Commission herein referred to and made a part hereof, as Exhibit to this petition, as the rates of shipments shown in said Appendix A.

III.

That on the 12th day of January, 1914, the Interstate Commerce Commission, after full hearing and in all things proceeding
23 legally, in the cause pending before it, being No. 732, Cattle Raisers Association of Texas et al. vs. Missouri, Kansas & Texas Railway Company et al., in which all of the defendants herein were parties, made its lawful order directing the defendants and each of the carriers named in said order to pay to the plaintiff damages on account of charging said shippers named as consignors in said report and order unjust and unreasonable rates on shipments of cattle shown in said Appendix A in the amounts therein named, said report and order of the Commission being Unreported Opinion No. A-583 hereto attached and made a part hereof as Exhibit A in which the unreasonable rates paid, the rates established by the Commission, the shipments made for which the unreasonable rates were paid, the amount of principal and interest as damages which the defendant- [were] directed severally to pay to plaintiff, are fully set out in connection with the findings in said Supplemental Report and order of the Commission, and in which amounts the shippers named as consignors, who assigned their claims to plaintiff, as therein shown, were damaged by the defendant- and said carriers respectively as found by the Commission, and which the plaintiff as assignee as stated in said report of the Commission is entitled to recover of said carriers defendants respectively as follows:

	Principal.	Interest.
Atchison, Topeka & Santa Fe Ry. Co...	$27,832.60	$10,459.42
Chicago & Eastern Illinois R. R. Co.....	1,360.02	470.47
Chicago & Alton Railroad Co.....	572.79	189.70
Chicago, Rock Island & Pacific Ry. Co...	13,218.16	4,821.81
Illinois Central Railroad Co.....	1,536.93	592.03
Missouri, Kansas & Texas Ry. Co.....	39,777.74	15,002.17
Missouri Pacific Railway Co.....	224.81	86.15
St. Louis, Iron Mountain & Southern Ry.	2,736.35	958.51
St. Louis & San Francisco R. R. Co.....	20,211.95	7,470.80
Texas & Pacific Railway Co.....	231.00	97.94

The detailed claims and amounts sued for herein being for and on account of the shipments made and freight paid to the defendants .....
by said consignors named in said order and appendix thereto, where

the name of the consignor is followed by the letter S and those followed by the letter C and also under which the abbreviation of the word ditto is used (Do.), meaning a repetition of the preceding line, name and letter indicating to whom the assignment
24 was made as shown by said Report and order of the Commission and explained by notation on page 5 of the Appendix thereto, to recover each and all of which claims and interest the plaintiff sues the defendants in the amounts which the Commission Ordered the defendants to pay as shown by said report and Order.

IV.

That the damages so claimed grew out of the fact that in the year 1903, the defendants and other Railway Companies in said cause 732 and their connecting carriers being engaged in the business of transporting cattle from said points of origin mentioned in said Appendix A to the markets of destinations as shown in said Appendix, *on* or about March, 1903, advanced the rates for transporting cattle from said points of origin named in said Appendix A, and from other points, to Kansas City, St. Joseph and St. Louis, Missouri; National Stock Yards and Chicago, Illinois; New Orleans, Louisiana and other points, the amount of the advance applicable to shipments therein specified being the difference between the rates shown in the column of Appendix A marked "Rate paid" and in the column marked "Rate ordered," which "Rate paid" named in said Appendix A the shippers named as consignors in said list were compelled severally to pay to the said carriers respectively as shown in said Appendix A on the shipments which they respectively made, as therein shown, which advanced rates were found by the Commission to be unjust and unreasonable, and on account of the payment of which on the said shipments, said carriers were ordered and directed to pay the said principal sum and interest to plaintiff as assignee of the said shippers named as consigners, as shown in said report and order of the Commission, Exhibit A hereto.

That after said rates were advanced and on February 10, 1904, the Cattle Raisers Association of Texas, a voluntary organization of live stock producers and shippers of Texas, Oklahoma and New Mexico, brought its complaint before the Interstate Commerce Commission against the said carriers and other carriers and their connecting lines of railway which had established said rates, alleging that said advanced rates were unjust and unreasonable, and the Commission, after full hearing of said complaint, in accordance with the Act to Regulate Commerce, on August 16, 1905, by its report and opinion in Cause No. 732, Cattle Raisers
25 Association of Texas et al. vs. M. K. & T. Ry. Co. et al., reported in 11 I. C. C. 298, found it to be a fact that said advanced rates were unjust and unreasonable and in violation of Section 1 of the Act to Regulate Commerce, as shown by the report of the Commission in said cause last above referred to, which report and opinion as published by the Interstate Commerce Commission is

hereby referred to, and plaintiff asks that it be considered a part hereof. That said advanced rates, notwithstanding the said decision of the Commission, remained in effect until November 17, 1908. That while the Commission found, as shown in its report and opinion, that the said rates on cattle were advanced as aforesaid, and the advances thereof were unjust and unreasonable, no formal order was made by the Commission consequent upon its said report and opinion, because the complainant, the Cattle Raisers Association, upon the promulgation of that report and opinion, made application to the Commission for more specific findings of fact, which application had not been decided or disposed of, but held under advisement by the Commission until the Act to Regulate Commerce was amended by what is known as the Hepburn law, effective August 28, 1906, and which application for more specific findings of fact was still pending before the Commission on August 29, 1906.

That on August 29, 1906, the complainant in behalf of itself and its members and others similarly situated who were engaged in the business of raising, buying and shipping cattle from the states of Texas, Oklahoma and New Mexico and Colorado over said lines of railway, to the markets shown as points of destination in said Appendix A hereinbefore referred to, filed *in* its petition with the Interstate Commerce Commission reaffirming its previous allegations of its petition filed with the Commission February 1, 1904, charging that the rates on cattle from the points hereinbefore mentioned to the destinations mentioned, and the advances in said rates, and the rates as advanced, were unjust and unreasonable, and praying that the Commission should proceed with such further hearing as it might deem necessary with respect to the allegations that the said rates were unjust and unreasonable, and for an order of the Interstate Commerce Commission prescribing the just and reasonable rates and praying for an order of reparation against the defendants respectively on behalf of the members of the Cattle Raisers Association of Texas, as shippers, and others similarly situated, for their respective damages accruing by reason of the payment of said unjust and unreasonable rates.

26 That thereupon the Interstate Commerce Commission, after answers duly filed by all the said defendants herein and their connecting carriers, proceeded to a full hearing of the matters contained in said petition, and after such full hearing as provided by law, the Interstate Commerce Commission on April 14, 1908, by its Report and Opinion, 13 I. C. C. 419, in said cause, found that said rates as advanced and the advances of said rates were unjust and unreasonable, as found in the previous opinion of the Commission as above referred to, reported in 11 I. C. C. 298, the finding of the Commission in its said report of April 14, 1908, being in part as follows:

"It is our opinion, therefore, that the advances shown in the appendix to our former report, which is referred to and made a part of this report, which were effected by the defendants during the year 1903, were unjust and unreasonable; that the present rates produced by those advances are unjust and unreasonable; that the rates

in effect previous to said advance would be just and reasonable and ought not to be exceeded for the future."

The report and opinion of the Interstate Commerce Commission as shown by the official report in said cause, 13 I. C. C. 419, is here referred to and complainant asks that the same be taken as a part hereof. That in said report and opinion the Commission reserved for further consideration the matter of reparation when the specific claims thereafter should be presented.

That the Commission, in its said last named report, and by supplemental order in said cause, prescribed and fixed the reasonable rates for shipments of cattle from the points of origin named in said Appendix A hereinbefore referred to, to the destinations therein named, being the same rates designated therein as "rate ordered," which became effective November 17, 1908.

V.

That the said parties named as consignors in said Appendix A above referred to, being the owners thereof, shipped the carloads of cattle as therein shown, from the points to the destinations shown in said Appendix A and paid to defendants respectively the rate of freight named in the column marked "Rate paid," which rates as aforesaid were held by the Commission to be unjust, unreasonable and unlawful at the dates of said shipments, in the amounts as named in said Appendix A and that said owners as shippers and consignors were thereby damaged by defendants respect-
27 ively in the amount of the unjust and unreasonable part of the rates as shown by the difference between "Rate paid" and "Rate ordered," as shown in Appendix A.

The rate paid was as aforesaid found by the Commission to be unjust and unreasonable and the rate ordered was found to be the just and reasonable rate applicable to such shipment, when made.

VI

And plaintiff alleges that the facts as found by the Commission in said reports and opinion are true and correct. That said shippers named in said Appendix as consignors, and E. B. Spiller, as secretary of the Cattle Raisers Association of Texas, and his predecessor in office, H. E. Cowley, in due time and in accordance with law, filed and caused to be filed with the Interstate Commerce Commission for and on account of the shippers named as consignors, and on account of said Spiller and Crowley as assignees for and on account of said shipments and freight paid, their petitions and claims for reparation for the amount of said unlawful charges which the Commission by its said report and order of January 12, 1914, Exhibit A hereto, directed the defendant to pay. That the said claims and the rights of the said owners as shippers and consignors as aforesaid were duly and legally assigned to E. B. Spiller, as shown in the report and order of the Commission, Exhibit A hereof, so that he became and was, at the date of said order, and now is, the legal and equitable

owner and holder thereof and entitled to have and recover the damages resulting to said shippers by reason of the premises, and as such was entitled to have the order of the Interstate Com-erce Commission as aforesaid ordering and directing the said carriers in said cause to pay said principal and interest, together with interest thereon, and is entitled to recover the same, together with interest and attorneys' fees provided by law.

That the said order of the Interstate Commerce Commission, Exhibit A hereof, directing the railroads therein named to pay the aforesaid damages as therein shown, was duly served upon each of the railway companies, defendants herein, but though often requested that said defendants have failed and refused and still fail and refuse to pay the same or any part thereof, and are therefore severally liable to the plaintiff in the full amount of said damages, principal, interest and attorneys' fees.

28

VII.

Wherefore, premises considered, the plaintiff prays for citation in due form and on final hearing for judgment for the aforesaid damages, interest, costs and attorneys' fees, and in duty bound will ever pray.

Second Count.

And the plaintiff, E. B. Spiller, reaffirming and adopting the foregoing allegations, and adopting Exhibit A thereto as Exhibit A to this court, and making reference to the said allegations and Exhibit as a part of this count of this petition, and complaining of the said defendants, and for cause of action against them jointly and severally and suing for treble damages under the anti-trust laws of the United States, to-wit, 26 Statute- at Large 209-210, Act of July 2, 1890, and 28 Statute- at Large 570, further alleges:

The Missouri, Kansas & Texas Railway Company, the Missouri Pacific Railway Company, the St. Louis & San Francisco Railway Company, the Atchison, Topeka & Santa Fe Railway Company, the Chicago, Rock Island & Pacific Railway Company, and the Chicago & Alton Railway Company, each of which own and operate their line of railway through the Western District of Missouri, and have principal operating offices in said District at Kansas City, Missouri; and the St. Louis, Iron Mountain & Southern Railway Company, the Chicago & East Illinois Railway Company, and the Illinois Central Railroad Company, which have offices and agents at Kansas City, Missouri; and the Texas & Pacific Railway Company, which has its principal office and agents at Dallas, in Dallas County, Texas. That as hereinafter alleged, all of said parties were acting together in the combination and conspiracy herein alleged, in restraint of interstate commerce.

That on or about March 3, 1905, the aforesaid defendants in combination and conspiracy with each other and with their connecting carriers operating in connection with defendants and other railroads in the States of Texas, Oklahoma, New Mexico and Colorado, here-

inafter named, transporting cattle to the live stock markets at Kansas City, Missouri, St. Joseph, Missouri, Omaha, Nebraska, National Stock Yards Illinois, Chicago Illinois and Orleans, Louisiana, as interstate commerce from the points named in Appendix A to the Supplemental Report of the Commission attached hereto as exhibit A, as points of origin, to the points named therein as points of destination of the shipments referred to, made, put into effect and maintained the unjust and unreasonable rates on cattle herein shown.

29 That in violation of law, to-wit: the defendants acting in combination and conspiracy with one another and with said connecting carriers, namely, the Gulf, Colorado and Santa Fe Railway Company, The Chicago, Rock Island and Gulf Railway Company, The Missouri, Kansas & Texas Railway Company of Texas, The St. Louis San Francisco and Texas Railway Company, The Fort Worth and Rio Grande Railway Company, The Fort Worth and Denver City Railway Company, The Colorado and Southern Railway Company, The Texas Central Railway Company, The Houston and Texas Central Railway Company, The International and Great Northern Railway Company, The Texas Midland Railway Company, The Galveston, Harrisburg and San Antonio Railway Company, The St. Louis, Southwestern Railway Company of Texas, The San Antonio and Arkansas Pass Railway Company, The Wichita Valley Railway Company, and all other railroad companies operating at that time in Texas, Oklahoma, New Mexico and Colorado, engaged in the through transportation of cattle from said points of origin to said points of destination, parties defendant to said cause 732, before the Interstate Commerce Commission, by their said acts, combination and conspiracy in violation of law, in restraint of interstate commerce as to the rates of freight on the shipments made as herein referred to, by the advances of the said rates, imposed upon all shippers, and particularly those mentioned as consignors in said Appendix A, said unreasonable rates, maintained the same and charged said rates on the said shipments as shown in said Report and Order of the Commission hereto attached as Exhibit A.

That the combination and conspiracy consisted of the said defendant- and their said connecting carriers, on or about March 3, 1903, coming together by their representatives and *my* means of personal communication and by correspondence, to establish and publish freight rates on cattle and other live stock as well as on other commodities by joint tariffs of rates, to which all of said defendants were parties, and by tariffs issued by the individual lines from their own stations and individual lines and their connecting lines where two or more lines participated in such transportation and by the joint tariffs of all of said defendants; said rates applying from said points of origin named in said Appendix A aforesaid to the destinations therein named, and were the rates named in the column headed "rate paid."

That defendant and all of said carriers and the others in combination and conspiracy with each other put into effect said rates as joint and several rates and maintained them in restraint of

30 interstate commerce in cattle, shipped from said points of origin to said destination, and by virtue of the said combination and conspiracy eliminated all competition in said rates, and advanced the same as found by the Interstate Commission in its said supplemental report and order, Exhibit A hereto, as shown by the difference in the "rate paid" and "rate advanced" as shown in said Appendix A, which advance was unjust, unreasonable and unlawful, and an unlawful restraint of interstate commerce, and were by combination and conspiracy contained in force by defendant down to November 17, 1908.

That the parties named in said Appendix A made the shipments and paid said unlawful rates as therein shown and consequently were damaged in their business and property to the extent of the difference in said rates and the rates ordered as shown in said Appendix A, in the aggregate amount and interest as shown by the finding of the Commission aforesaid; and that said Consignors so damaged assigned their claims for damages to plaintiff as shown in said Supplemental Report and Order of the Commission attached hereto as Exhibit A, as a part hereof, so that plaintiff is entitled to all the rights of the said injured parties, and is therefore damaged by virtue of the premises in his business and property in said amounts for all of which defendants are jointly and severally liable to plaintiff, and which said defendants have failed and refused and still refuse to pay.

That said parties so damaged were entitled to treble damages and that plaintiff as assignee is entitled to recover the same, jointly and severally, together with interest, costs and attorneys' fees.

The plaintiff, therefore, prays citation, and on final hearing for his aforesaid damages, interest and costs and for reasonable attorneys' fees, and for general relief.

COWAN & BURNEY, *Fort Worth, Texas;*
DEATHERAGE & CREASON,
Kansas City, Mo.,
Attorneys for Plaintiff.

COWAN & BURNEY,
Fort Worth, Texas;
DEATHERAGE & CREASON,
Kansas City, Mo., Attys. for Plff.

Fort Worth, Texas, Dec. 24, 1914.

31 STATE OF TEXAS,
County of Tarrant:

Before me, the undersigned authority, this day personally appeared E. B. Spiller, plaintiff in the above cause who being by me duly sworn stated upon his oath that the allegations of the foregoing petition are true and correct.

E. B. SPILLER.

Subscribed and sworn to before me this the 24 day of Dec., 1914.
[SEAL.]
M. E. GRIFFITHS,
Notary Public, Tarrant Co., Tex.

Answer of Defendant Atchison, Topeka and Santa Fe Railway Company.

(Filed in the District Court on April 26, 1915.)

I.

Now on this day comes defendant, Atchison, Topeka and Santa Fe Railway Company, and for its answer to the first count of the petition in the above entitled cause, denies each and every allegation in said count contained.

Wherefore having fully answered said count this defendant prays to be discharged with its costs.

II.

And for its answer to the second count of the petition in the above entitled cause, defendant, Atchison, Topeka and Santa Fe Railway Company, denies each and every allegation in said Count contained.

Wherefore, having fully answered said count this defendant prays to be discharged with its costs.

THOMAS R. MORROW,
GEORGE J. MERSEREAU,
JOHN H. LATHROP,
Attorneys for Defendant Atchison, Topeka and Santa Fe Railway Co.

(*Record Entry, September* 18, 1915, *Granting Leave to The Atchison, Topeka and Santa Fe Ry. Co. and Illinois Central R. R. Co. to Withdraw Answers and File Motions to Elect and Demurrers.*)

32 The Separate Applications of the Atchison, Topeka & Santa Fe Ry. Co., and Illinois Central R. R. Co., defendants herein, this day filed, for leave to withdraw answers herein, and leave to file Motions to Elect and Demurrers coming on for hearing the same are argued and submitted to the court, and the court being fully advised in the premises, it is ordered the Atchison, Topeka & Santa Fe Ry. Co., and the Illinois Central R. R. Co., defendants herein, be granted leave to withdraw their answers herein and further that said defendants be granted 10 days within which to file Motions to Elect and Demurrers.

(*Record Entry of Filing of Demurrers and Motions to Elect by Atchison, Topeka and Santa Fe Ry. Co. and Illinois Central R. R. Co. September* 28, 1915.)

This day comes the Atchison, Topeka & Santa Fe Ry. Co., and Illinois Central R. R. Co., and file separate Demurrers and Motions to Elect herein.

(*Demurrer of Atchison, Topeka and Santa Fe Ry. Co. to Petition. Filed Sept.* 28, 1915.)

I.

Comes now The Atchison, Topeka and Santa Fe Railway Company, one of the defendants in the above entitled cause, and demurs to the petition as a whole, including both counts thereof taken together, it being intended here to designate both counts of said petition taken together by the words "petition as a whole," and for grounds or causes of demurrer says that said petition as a whole, that is both counts taken and considered together as constituting one petition, discloses upon its face a misjoinder of causes of action and an attempt to improperly and unlawfully join in one petition a pretended and alleged cause of action as set forth in the first count of said petition, and springing from and based upon the act of the Congress of the United States of date February 4th, 1887, entitled "An Act to Regulate Commerce," and acts amendatory thereof and thereto, with a pretended and alleged cause of action undertaken to be set forth in the second count of said petition, and springing from and predicated upon another and different act of Congress of date July 2nd, 1890, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Anti-Trust Law.

33 Defendant says that a cause of action arising under said Act to regulate commerce cannot be joined in the same petition with a cause of action arising under said so-called Sherman Anti-Trust Law.

II.

Comes now The Atchison, Topeka and Santa Fe Railway Company, one of the defendants in the above entitled cause, and demurs to the first count of plaintiff's petition filed therein, and for grounds or causes of demurrer says:

A.

Said first count in said petition does not state facts sufficient to constitute a cause of action against this defendant.

B.

In said first count of plaintiff's petition there is a misjoinder of alleged causes of action in this, that there is an attempt in said first count of said petition to join alleged causes of action not permissible by law to be so joined.

C.

In the first count of plaintiff's petition herein there is a misjoinder of defendants in this, that with reference to said first count there

are joined therein various and sundry defendants each of whom is interested only in his own alleged claim and has no interest in any other of the alleged claims for which, or upon which, a recovery is sought in said first count, and if it were proper to render any judgment at all upon said first count, which defendant denies, no judgment in or upon said first count could be rendered in favor of all of said plaintiffs, but if proper at all to render any judg- upon any of the claims involved in said first count, which defendant denies, there could only be rendered a judgment singly upon the different claims, and none of the plaintiffs would have any interest in any claim except its own.

D.

The said first count in said petition fails to disclose or allege that petitions or claims for reparation were filed with the Interstate Commerce Commission within two years from the time the alleged cause of action accrued; and fails to disclose or allege that petitions or claims for reparation were filed as required by law with respect and regard to the matters or claims for which a recovery is herein sought,
either by the plaintiff herein or those under whom he claims,
34 by reason of which this Court has no jurisdiction with respect to the first count of said petition.

D *a.*

The plaintiff, E. B. Spiller, is not entitled under any warrant of law to predicate any recovery in damages as asked in the second count of the petition herein, upon the claims alleged in the petition to have been assigned to him after the making of the petition herein, and cannot maintain thereon, or in connection therewith, any recovery, even if a recovery were proper in view of the other alleged grounds of demurrer set forth herein.

D (*b*)

The plaintiff, E. B. Spiller, is not entitled under any warrant of law to predicate any recovery in damages as asked in the second count of the petition herein upon any of the claims alleged in the petition to have been awarded to him as assignee by the order of the Interstate Commerce Commission referred to in the petition herein.

E.

The Interstate Commerce Commission had no power or authority upon the facts stated in said petition, including Appendix A attached thereto, to have made or entered any order of reparation in favor of plaintiff herein, E. B. Spiller, as assignee of the claims upon which a recovery is herein sought, either as to the principal of said claims or interest thereon. Reparation, if proper at all to have been ordered upon said claims, which this defendant denies, could have

been made only in favor of the respective shippers of the cattle involved in each shipment, and there is no law warranting or authorizing an order or award of reparation by said Commission in favor of an assignee of such claims, or any of them, and said Commission did not have power or authority under any law to have made in favor of plaintiff Spiller as assignee, the order of reparation or order of damages, as set forth in said first count of plaintiff's petition.

F.

Said Interstate Commerce Commission had no power or authority under the law to have entertained any claim or claims, or petition or petitions, by plaintiff Spiller, for reparation or damages growing out of or predicated upon or connected with the alleged overcharges or overpayments referred to and set forth in plaintiff's petition, and Appendix A, Exhibit A thereto attached, and plaintiff Spiller
35 had no right and was not entitled under the law to have received or obtained in his favor, as assignee, from the Interstate Commerce Commission any order of reparation or order for payment of damages on account of said claims, or on account of the shipments of cattle referred to in plaintiff's petition and Appendix A, Exhibit A thereto attached, and had no right to petition said Interstate Commerce Commission for any such order.

G.

Plaintiff, as assignee, is not entitled under the law to have or maintain the alleged cause of action set forth in the first count of his petition, with reference to or predicated upon any of the claims referred to in said first count of his petition or Appendix A, Exhibit A thereto attached, under or upon any order of the Interstate Commerce Commission in his favor, as assignee, with reference to said claims, or any of them.

H.

The alleged cause, or causes of action, and each of them, set forth in the first count of plaintiff's petition (if any of them ever existed, which this defendant denies) are each and all barred by the Statute of Limitations, and were each and all barred at and before the institution of this action.

I.

The said first count of said petition and the allegations thereof are totally insufficient to sustain an award of damages or to allow any recovery thereon by plaintiff herein.

Said first count of said petition and the allegations thereof are totally insufficient to sustain a judgment in favor of plaintiff for any purpose or to allow a recovery thereon in favor of plaintiff.

J.

In Paragraph III of the first count in said petition it is alleged that:

"The Interstate Commerce Commission, after full hearing and in all things proceeding legally, in the cause pending before it, being No. 732, Cattle Raisers Association of Texas et al., vs. Missouri, Kansas & Texas Railway Company et al., in which all of the carriers herein named were parties, made its lawful order directing the defendant and each of the carriers named in said order to pay to the plaintiff damages on account of charging said shippers named as consignors in said report and order unjust and unreasonable
36 rates on shipments of cattle shown in said Appendix A in the amounts therein named."

Defendant says that said statement is simply a statement of a conclusion of law and is entirely insufficient in law as a matter of pleading and should be held for naught, and is altogether insufficient to sustain the further and other allegations in said paragraph III that said Commission made its lawful order, or any order, relating to the payment of damages to plaintiff as set forth in said Paragraph III.

Defendant further states that in said Paragraph III it is alleged with reference to the action by the Interstate Commerce Commission that it made its lawful order directing the payment of damages to be made to plaintiff.

Defendant says that such statement is the statement of a mere conclusion of law and without a statement of facts showing authority in said Interstate Commerce Commission to have made the order referred to, is altogether insufficient and should be held for naught, in view of which said first count in the petition fails to state a cause of action.

K.

The said first count of said petition and the allegations thereof are totally insufficient to sustain an award of reparation or to allow or sustain any recovery thereon by plaintiff herein.

Wherefore, defendant prays judgment in its favor upon the said first count of plaintiff's petition and that with reference thereto it have and recover its costs herein laid out and expended.

III.

Also, Comes now The Atchison, Topeka and Santa Fe Railway Company, one of the defendants in the above entitled cause, and demurs to the second count in plaintiff's petition filed therein, and for grounds or causes of demurrer says:

A.

Said second count in said petition does not state facts sufficient to constitute a cause of action against this defendant.

B.

In the second count of plaintiff's petition herein there is a misjoinder of defendants in this, that with reference to said second count there are joined therein various and sundry defendants each of whom is interested only in its own alleged claims for which or upon which a recovery is sought in said second count, and if it were proper to render any judgment at all upon said second count, which defendant denies, no judgment in or upon said second count could be rendered in favor of all of said plaintiffs, but if proper at all to render any judgment upon any of the claims involved in said second count, which defendant denies, there could only be rendered a judgment singly upon the different claims and none of the plaintiffs would have any interest in any claim except its own.

37

C.

The plaintiff, E. B. Spiller, is not entitled under any warrant of law to predicate any recovery in damages as asked in the second count of the petition herein, upon the claims alleged in the petition to have been assigned to him after the making of the order of the Interstate Commerce Commission referred to in the petition herein, and cannot maintain thereon, or in connection therewith, any recovery, even if a recovery were proper in view of the other alleged grounds of demurrer set forth herein.

D.

The plaintiff, E. B. Spiller, is not entitled under any [-rant] of law to predicate any recovery in damages as asked in the second count of the petition herein upon any of the claims alleged in the petition to have been awarded to him as assignee by the order of the Interstate Commerce Commission referred to in the petition herein.

I.

The second count in the petition referred to does not disclose or show facts warranting or authorizing in law the making by said Interstate Commerce Commission of the order referred to in the petition herein, and said Commission was not authorized or warranted under the law to make such order.

The averments of plaintiff's petition in the second count are not sufficient under any law and especially are not sufficient under the Act of Congress entitled, "An Act to Protect Trade and Commerce against unlawful Restraints and Monopolies," approved July 2nd, 1890, commonly known as the Sherman Anti-Trust Act, or any amendments thereof or thereto, to sustain a judgment for damages in favor of plaintiff.

38

J.

Plaintiff Spiller, as assignee, joined with other parties is not entitled under the law to have or maintain the alleged cause of action set forth in the second count in the petition, and with reference to or predicated upon any of the claims referred to in said second count of the petition, or Appendix, Exhibit A, thereto attached, under or upon any order of the Interstate Commerce Commission in his favor, as assignee, with reference to said claims, or any of them.

K.

In said second count of plaintiff's petition plaintiff has improperly joined several separate and distinct causes of action which under the law he is not permitted to join, and therefore in said second count there is a misjoinder of causes of action.

L.

Defendant further says with reference to the second count of said petition that plaintiff, E. B. Spiller, as assignee, as set forth in said petition, is not entitled to maintain the alleged action or cause of action attempted to be set forth in the second count of said petition, and is not entitled as assignee to maintain any action for damages under the act of Congress of date July 2nd, 1890, entitled: "An Act to Protect Trade and Commerce against unlawful Restraints and Monopolies" commonly known as the Sherman Anti-Trust Law, or amendments thereof or thereto.

M.

The said second count of said petition and the allegations thereof are totally insufficient to sustain a judgment for damages or allow a recovery thereon by plaintiff herein.

N.

The Interstate Commerce Commission had no power or authority upon the facts stated in said petition, including Appendix A attached thereto, to have made or entered an order of reparation in favor of plaintiff herein, E. B. Spiller, as assignee of the claims upon which a recovery is herein sought, either as to the principal of said claims or interest thereon. Reparation, if proper at all to have been ordered upon said claims, which this defendant denies,
39 could have been made only in favor of the respective shippers of the cattle involved in each shipment, and there is no law warranting or authorizing an order or award of reparation by said Commission in favor of an assignee of such claims, or any of them, and said Commission did not have power or authority under any law to have made in favor of plaintiff Spiller, as assignee, the

order of reparation or order of damages, as set forth in said second count of plaintiff's petition.

O.

Said Interstate Commerce Commission had no power or authority under the law to have entertained any claim or claims, or petition or petitions, by plaintiff Spiller, for reparation or damages growing out of, or predicated upon, or connected with the alleged overcharges or overpayments referred to and set forth in plaintiff's petition and Appendix, Exhibit A, thereto attached; and plaintiff Spiller had no right and was not entitled under the law to have received or obtained in his favor, as assignee, from the Interstate Commerce Commission any order of reparation or order for payment of damages on account of said claims, or on account of the shipments of cattle referred to in plaintiff's petition and Appendix, Exhibit A, thereto attached, and had no right to petition said Interstate Commerce Commission for any such order.

P.

Plaintiff Spiller, as assignee, is not entitled, in connection with or on account of any of the matters and things set forth in the s-cond count of his petition herein, on account of them taken in connection with the allegations in the first count of said petition, to have or maintain any action for damages, and especially he is not entitled to have or maintain any action for damages under the Act of Congress entitled, "An Act to Protect Trade and Commerce against unlawful restraints and Monopolies," commonly known as the Sherman Anti-Trust Law, approved July 2nd, 1890.

Q.

The averments of plaintiff's petition in the second count thereof, taken singly or in connection with the averments of the first count thereof, are not sufficient to sustain judgment for damages in plaintiff's favor.

40

[L.]

Plaintiff as assignee is not entitled under the so-called Sherman Anti-Trust Law, referred to above, to have or maintain the alleged cause of action set forth in the second count in his petition, with reference to or predicated upon any of the claims referred to in said second count of his petition or Appendix, Exhibit A, thereto attached under or upon any order of the Interstate Commerce Commission in his favor as assignee, with reference to said claims, or any of them.

[M.]

The alleged cause, or causes of action, and each of them, set forth in the second count in plaintiff's petition (if any of them ever ex-

isted, which defendant denies) are each and all barred by the Statute of Limitations and were each and all barred at and before the institution of this suit.

[N.]

The said second count of said petition and the allegations thereof are totally insufficient to sustain an award of damages or to allow any recovery thereon by plaintiff herein.

[O.]

The averments of the petition in the second count are not sufficient to sustain judgment for damages.

[P.]

The second count of the petition fails to allege or disclose that plaintiffs or any of them filed petitions or claims for reparation with the Interstate Commerce Commission within two years from the time the alleged cause or causes of action accrued and fails to show or allege or disclose that petitions or claims for reparation were filed as required and within the two years' time required by law with respect and regard to matters and claims on account of and because of or connected with which sought by plaintiff, by reason of which this Court has no jurisdiction with respect to the second count of said petition.

[Q.]

The said second count of said petition and the allegations thereof are totally insufficient to sustain any award of reparation or to allow or sustain any recovery thereon by plaintiff herein.

41 [R.]

And defendant demurs to the following words in the second count of plaintiff's petition, viz:

"Reaffirming and adopting the foregoing allegations and adopting Exhibit A thereto as Exhibit A to this count, and making reference to said allegations as a part of this count of this petition."

This defendant says that said words have no application in common to each of the counts in the petition, and therefore should be held for naught so far as the second count is concerned, and in connection with the allegations of the second count of said petition, or taken in connection therewith, cannot afford any basis for a suit by plaintiff as assignee for a judgment for damages under said Act of Congress entitled "An Act to Protect Trade and Commerce again stunlawful Restraints and Monopolies," commonly known as the Sherman Anti-Trust Law, approved July 2nd, 1890, and amendments thereof.

Wherefore, defendant prays judgment in its favor upon said second count of plaintiff's petition and that with reference thereto it have and recover its costs herein laid out and expended.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
By ROBERT DUNLAP,
T. J. NORTON,
THOMAS R. MORROW,
GEORGE J. MESEREAU,
JOHN H. LATHROP,
Its Attorneys.

(Record Entry, December 7, 1915, of Overruling of Demurrers and Motions to Elect, etc.; Dismissal as to Second Count of Petition; Separate Answer and Stipulation Waiving Jury. Filed, etc., December 7, 1915.)

The demurrers, motions to elect and motions to quash heretofore submitted to the Court and taken under advisement, now the Court being fully advised in the premises it is ordered that said demurrers and motions to elect and each of them be overruled to which rulings of the court defendants and each of them (except the Texas Pacific Railway Co) at the time except, it is further ordered that said motion to quash be sustained as to the Texas and Pacific Ry. Company. Thereupon plaintiff dismisses as to the
42 Texas Pacific Ry. Co., and also dismisses as to the 2nd count of the petition as to the balance of the defendants; now come defendants and file separate answers herein, also stipulation waiving jury; also comes plaintiff and files reply to separate answers of defendants.

NOTE.—The record entry of the filing of the Answer of December 7, 1915, in the case of E. B. Spiller vs. A. T. & S. F. Ry. Co., No. 4317, provides that said answer as filed shall be considered as filed in cases Nos. 4308 and 4320.

No. 4317.

E. B. SPILLER, Plaintiff,
vs.
THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, Defendant.

Answer of Defendant to Petition of Plaintiff.

(Filed in the District Court on December 7, 1915.)

To First Count.

For answer to the first count of the petition of the plaintiff in this case the defendant, The Atchison, Topeka and Santa Fe Railway Company, says:

I.

It admits the averments contained in paragraph I.

II.

It admits the averments of paragraph II.

III.

It admits the averments of paragraph III to the effect that in case No. 732 before the Interstate Commerce Commission an order was entered upon each of the carriers named in said order to pay damages to plaintiff on account of freight charges paid by shippers to the carriers in the instances stated in Appendix A to the petition, and that the award of damages in said order was made up of principal and interest.

But it denies that in all things the Interstate Commerce Commission proceeded legally, and it denies that said Commission made a lawful order.

It admits the remaining averments of paragraph III.

43 IV.

Answering paragraph IV, it admits that the claimed damages grow out of freight rates charged by the defendant and other railways made defendants in said cause No. 732 before the Interstate Commerce Commission for the transportation of cattle as stated. It admits the advance of rates in March 1903 as stated.

But it says that the complaint in said cause No. 732 and the reports and order in paragraph IV referred to were merely for the purpose of fixing a maximum rate on shipments of cattle after November 17, 1908, and said complaint was not made for or on behalf of any shipper or person claiming to have been damaged by anything done or omitted to be done by this defendant in violation of the Act to Regulate Commerce; and that no order of reparation against this defendant was or could have been made upon such complaint and all the allegations with respect thereto are irrelevant, immaterial, and impertinent to this action.

It admits that in the said last report the Commission prescribed rates on cattle for the future, but it says that such order was effective only from and after November 17, 1908.

It admits that the Interstate Commerce Commission made an award of damages to plaintiff as assignee on account of the payment by shippers of the rates so advanced. But it says that plaintiff was not the assignee of said shippers, that the Interstate Commerce Commission was without legal proof that he was assignee, and that the said Commission was without jurisdiction to entertain or pass upon a claim by an assignee.

It admits the averments in the remainder of paragraph IV.

V.

Answering paragraph V, it denies that the persons named as consignors in said Appendix A were the owners of the shipments of cattle therein shown, but it says that, on the contrary, it was shown to the Interstate Commerce Commission that many of such shipments were billed in the names of others than the owners. It says further that the record made before the Interstate Commerce Commission did not disclose the ownership of the cattle transported and that no shipping bills or shipping receipts or other memoranda were introduced before the Interstate Commerce Commission to show who owned the cattle transported and who paid the freight and who was damaged by the rate paid and how the damage occurred.

44 It admits the remaining averments of paragraph V, except that it denies that the shippers and consignors were damaged by the freight rate collected by this defendant, and it says that not a scintilla of evidence offered before the Interstate Commerce Commission showed damage to any person whomsoever.

VI.

Answering paragraph VI, this defendant denies that the facts as found by the Commission in its report and opinion are true or correct. It denies that persons named as shippers in said appendix to the petition as consignors filed in due time or at any time with the Interstate Commerce Commission their claims for reparation in accordance with the Act to Regulate Commerce, and it says that any claims for reparation filed by E. B. Spiller as Secretary for the Cattle Raisers Association of Texas or by his predecessor in office, H. C. Crowley, as assignee, were void in law and of no effect.

It denies that the claims and rights of the owners or shippers were duly or legally assigned to said Spiller, and it says that no assignment from any shipper or owner to said Spiller was introduced in evidence before the Interstate Commerce Commission, and that the Commission had no evidence on which to support the finding that assignments had been made. It therefore denies that said Spiller was at the date of said order of reparation or now is the equitable owner or holder of any claims for reparation arising out of said rates. It denies that said Spiller was entitled to have from the Interstate Commerce Commission the said order.

It admits that the said order of the Interstate Commerce Commission shown by Exhibit A to the petition was served upon it as stated, and admits that it has failed and refused to pay the award against it therein contained.

It denies that it is liable to the plaintiff in the full amount of said damages stated with principal, interest and attorney's fees. It avers that it is not indebted to the plaintiff in any sum whatever.

VII.

Answering further said first count as a whole defendant says that it denies each and every allegation contained therein that is not hereinbe*fore expressly admitted*.

Wherefore the defendant asks that the petition of the plaintiff be dismissed as to the first count, and that the defendant have its costs herein sustained.

45 To Second Count.

Answering the second count of the petition, the defendant asks that the court consider as restated any of the defendant's averments respecting the first count which may have application to the second count.

The defendant admits that it is a common carrier operating a line of railway through the western district of Missouri.

It denies that on March 3, 1903, or at any other time it entered into a combination or conspiracy with the railway companies named in the second count of said petition, or with any railway companies operating at the time in Texas, Oklahoma, New Mexico, or Colorado and engaged in the through transportation of cattle from any points of origin to any destination.

It denies that this defendant or any of said carriers committed any acts or combined or conspired in violation of law or in restraint of interstate commerce as to the rates of freight on the shipments made as referred to in Appendix A of the petition.

It denies that any combination or conspiracy consisted of the coming together of the defendant and the other said carriers by their representatives or by means of personal communication or by correspondence to establish and publish freight rates on cattle and other live stock as well as on other commodities by joint tariffs of rates to which all the said carriers were parties and by tariffs issued by individual carriers.

It admits that at the time mentioned the defendant and the other carriers published an advance of rates on live stock, but it denies that said rates were put into effect in restraint of interstate commerce in cattle or that the publication and collection of such rates eliminated competition in said rates.

It denies that said advance of rates was unjust, unreasonable, or unlawful, and it denies that said advance of rates was an unlawful restraint of interstate commerce.

It denies that the parties named in Appendix A made the shipments as therein shown and it denies that they paid unlawful rates, and it denies that they were damaged in their business or property to the extent of the difference between the rates paid and the rates subsequently prescribed by the Interstate Commerce Commission.

46 It denies that the shippers assigned their claims for damages to the plaintiff and it therefore denies that the plaintiff

is entitled to all the rights of said shippers. It denies furher that the plaintiff has been damaged by virtue of the premises or for any other reason or that the defendant is liable to the plaintiff in any sum.

It denies that the shippers were entitled to treble damages or that plaintiff as assignee is entitled to recover.

For additional answer to said second count the defendant says that the report of the Interstate Commerce Commission attached to the petition as Exhibit A is no support of the plaintiff's claim of damages or of what he is entitled to as treble damages, for the reason that rate questions are cognizant by a court under the Act to Regulate Commerce only and not under the Sherman Anti-Trust Act.

Wherefore the defendant asks that the petition of the plaintiff be dismissed as to the second count and that the defendant have its costs herein sustained.

To the Petition as a Whole.

For answer to the petition of plaintiff as a whole this defendant says that it appears upon the face of said petition and in each count thereof that the plaintiff was not and is not a person claiming to have been damaged by this defendant as a common carrier for or on account of anything done or omitted to be done by the defendant in contravention of the provisions of the Act to Regulate Commerce or the amendments thereto or in contravention of the Sherman Anti-Trust Law; that said plaintiff was without authority in law to file his alleged complaint before the Interstate Commerce Commission and was not entitled to an award of reparation or damages by said Commission against this defendant and is not entitled to maintain this action in this court; and that the order of said Commission based on such alleged complaint is without authority of law and void.

Defendant further says that it appears upon the face of the alleged supplemental report and order of the Interstate Commerce Commission of January 12, 1914, attached to plaintiff's petition as Exhibit A, and from the findings of fact of the Interstate Commerce Commission contained in said supplemental report that the said Commission was without jurisdiction or power to make an award of reparation against the defendant and in favor of the plaintiff.

47 Further answering defendant says that it does not appear from plaintiff's petition that plaintiff is or was damaged by any alleged act or omission of defendant in violation of law, but on the contrary it appears that the order of reparation against the defendant was made without authority or requisite jurisdiction in the premises and that it was and is invalid and void.

Defendant further says that it does not appear from plaintiff's petition that any complaint for the recovery of damages against defendant by or on behalf of any person claiming to be damaged by it by reason of any violation of law was filed with the Interstate Commerce Commission within two years from the time a cause of action, if any, may have accrued, and that it does not appear said Commission acquired jurisdiction or authority to make an award

against the defendant. It appears from plaintiff's petition that the contrary was the case.

Further answering the defendant says that any shipments made by any shippers or consignors referred to in Appendix A of the petition over the line of this defendant were under the regular and lawful tariff rates in force at the time, which rates were voluntarily and without objection paid by the parties shipping.

Wherefore the defendant asks that the petition of the plaintiff as a whole be dismissed, and that the defendant have its costs herein sustained.

THOMAS R. MORROW,
ROBERT DUNLAP,
T. J. NORTON,
Attorneys for The Atchison, Topeka & Santa Fe Railway Company, Defendant.

No. 4308.

E. B. SPILLER et al., Plaintiffs,
vs.
MISSOURI, KANSAS & TEXAS RAILWAY COMPANY et al., Defendants.

Reply of Plaintiffs to Separate Answer of A., T. & S. Fe Ry. Co.

(Filed in the District Court on December 7, 1915.)

Come now the above named plaintiffs and for their reply
48 to the answer of the above named defendant, deny generally all and singular each and every allegation of new and affirmative matter in said answer contained in any and all of the paragraphs set up in said answer.

Wherefore, plaintiffs pray judgment as in their original petition.

COWAN & BURNEY,
DEATHERAGE & CREASON,
Attys. for Plffs.

No. 4317.

E. B. SPILLER, Plaintiff,
vs.
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Defendant.

Stipulation Waiving Jury.

Filed December 7, 1915.

It is hereby stipulated and agreed by the parties hereto and the parties to cases with the following numbers and titles:

#4308, E. B. Spiller vs. Missouri, Kansas & Texas Railway Company, et al.
#4310, E. B. Spiller vs. Missouri Pacific Railway Company.
4311, E. B. Spiller vs. Illinois Central Railroad Company.
4312, E. B. Spiller vs. St. Louis, Iron Mountain & Southern Railway Company.
4313, E. B. Spiller vs. St. Louis & San Francisco Railroad Company.
4315, E. B. Spiller vs. Chicago, Rock Island & Pacific Railway Company.
4318, E. B. Spiller vs. Missouri, Kansas & Texas Railway Company.
4319, E. B. Spiller vs. Chicago & Alton Railroad Company.
4320, E. B. Spiller, et al. vs. Missouri, Kansas & Texas Railway Company, et al.,

that this case and each of said cases may be tried by the court without a jury, a jury being hereby waived, and that the right is reserved to the parties hereto to prosecute a writ of error to the
49 Court or Courts of Appellate jurisdiction, and thereby to review all questions of law arising on the trial, and also the record in this case, as fully as might be done if the jury were not waived. It being agreed that causes 4308 and 4320 are the causes to be now tried, and that the other causes be continued.

S. H. COWAN,
J. H. BURNEY,
B. F. DEATHERAGE,
GOODWIN CREASON,
Attorneys for Plaintiff.

J. W. Jamison.
C. S. Burg.
F. P. Sebree.

THOMAS R. MORROW,
ROBERT DUNLAP,
T. J. NORTON,
Attorneys for Defendants.

(*Record Entry of Trial, December* 8, 1915.)

4308.

E. B. SPILLER

vs.

M., K. & T. RY. Co. et al.

A jury having been heretofore waived herein, this day this cause coming on for hearing before the court, all parties hereto appearing by their respective counsel; thereupon evidence on behalf of the plaintiff was submitted; at its conclusion defendant files a demurrer to the same; to which the court reserves its ruling, thereupon evidence on behalf of the defendants was submitted, at its conclusion defendants [files] a peremptory declaration, to which the court reserves its ruling; thereupon it is ordered that said defendants be

granted until January 8th, 1916, within which to file briefs herein, and that plaintiff be granted 20 days to reply thereto.

(*Record Entry of Trial, February*, 18, 1916.)

This day this cause again coming on for hearing the parties thereto appearing by their respective counsel thereupon further evidence on behalf of the plaintiff was heard; at its conclusion defendants again renew their demurrers to the same, ruling upon which said demurrers is by the court reserved; thereupon arguments of counsel are heard and this cause submitted to the court and taken under advisement.

50 (*Record Entry of Overruling of Declarations of Law Requested by Defendants and Finding in Favor of Plaintiffs, etc., July* 28, 1916.)

4308.

E. B. SPILLER

vs.

M., K. & T. RY. CO. et al.

4320.

E. B. SPILLER et al.

vs.

MO., KANS. & TEXAS RY. CO. et al.

These causes having heretofore been submitted to the court and taken under advisement, now the court being fully advised in the premises in accordance with a memorandum opinion this day filed finds the issues in said causes in favor of the plaintiffs, overrules the declarations of law and each of them asked by the defendants and each of them, and it is ordered that judgment entries be prepared in accordance therewith. To each of which rulings of the court each of the defendants then and there excepted and still excepts.

(*Judgment. August* 16, 1916.)

4308.

E. B. SPILLER

vs.

MISSOURI, KANSAS & TEXAS RY. CO., MISSOURI PACIFIC RY. CO., St. Louis & San Francisco R. R. Co., Atchison, Topeka & Santa Fe Ry. Co., Chicago, Rock Island & Pacific Ry. Co., Chicago & Alton R. R. Co., St. Louis, Iron Mountain & Southern Ry. Co., Chicago & Eastern Illinois R. R. Co., Illinois Central R. R. Co.

Now on this day this case coming on regularly to be heard and considered all of the parties plaintiffs and defendants by their respective attorneys having heretofore appeared and having by written stipulation herein waived a jury and submitted this cause to the court and all of the evidence having been heretofore introduced, seen and heard by the court, and briefs of counsel having been submitted seen and read by the court, and oral arguments of counsel having been duly heard by the court, the court now being fully advised in the premises, finds all of the issues made by the pleadings both of law and fact in favor of the plaintiff and finds the facts to be as stated in the First Count of Plaintiff's Petition herein.

Wherefore, it is ordered, adjudged and decreed by the court that plaintiff E. B. Spiller do have and recover of and from the
51 defendant Atchison, Topeka and Santa Fe Railway Company, the sum of Thirty Eight Thousand Two Hundred Ninety Two and 02/100 Dollars ($38,292.02) being the amount of principal and interest ordered by the Interstate Commerce Commission to be paid to the said plaintiff E. B. Spiller by the said Atchison, Topeka and Santa Fe Railway Company on or before June 15, 1914, and do have and recover of and from said defendant the further sum of Forty Eight Hundred Eighty Two and 21/100 Dollars ($4,882.21) being the interest at six per cent per annum on said sum of $38,292.02 from June 15, 1914 to August 1, 1916, being a total sum of Forty Three Thousand One Hundred Seventy Four and 23/100 Dollars ($43,174.23) together with interest thereon from August 1, 1916, at six per cent per annum until paid and that the plaintiff have and recover of and from said Atchison, Topeka & Santa Fe Railway Company the further sum of Four Thousand Three Hundred and Seventeen and 42/100 Dollars ($4,317.42) as attorneys' fees for prosecuting this action, which sum the court finds to be reasonable, which attorneys' fees shall be taxed as costs herein; and that the plaintiff also have and recover of said Atchison, Topeka & Santa Fe Railway Company his costs herein laid out and expended, for all of which let execution issue.

It is further ordered, adjudged and decreed by the court that plaintiff E. B. Spiller do have and recover of and from the defendant

Chicago & Eastern Illinois Railroad Company the sum of Eighteen Hundred Thirty and 49/100 Dollars ($1,830.49) being the amount of principal and interest ordered by the Interstate Commerce Commission to be paid to the said plaintiff E. B. Spiller by the said Chicago & Eastern Illinois Railroad Company on or before June 15, 1914, and do have and recover of and from said defendant the further sum of Two-Hundred Thirty Two and 95/100 Dollars ($232.95) being interest at six per cent per annum on said sum of $1,830.49 from June 15, 1914, to Aug. 1, 1916, being a total sum of Two Thousand Sixty-three and 42/100 Dollars ($2,063.42) together with interest thereon from Aug. 1, 1916, at six per cent per annum until paid; and that the plaintiff have and recover of and from said Chicago & Eastern Illinois Railroad Company the further sum of Two Hundred Six & 34/100 Dollars, ($206.34) as attorneys' fees for prosecuting this action, which sum the court finds to be reasonable, which attorneys' fees shall be taxed as costs herein, and that the plaintiff also have and recover of said Chicago & Eastern Illinois Railroad Company his costs herein laid out, and [*e*xpended], for all of which let execution issue.

It is further ordered, adjudged and decreed by the court that plaintiff E. B. Spiller do have and recover of and from the
52 defendant Chicago & Alton Railroad Company the sum of Seven Hundred Sixty-two and 49/100 Dollars, ($762.49) being the amount of principal and interest ordered by the Interstate Commerce Commission to be paid to the said plaintiff E. B. Spiller by the said Chicago & Alton Railroad Company on or before June 15, 1914, and do have and recover of and from said defendant the further sum of Ninety-seven and 21/100 Dollars (97.21) being the interest at six per cent per annum on said sum of $762.49 from June 15, 1914 to Aug. 1, 1916, being a total sum of Eight Hundred Fifty-nine and 70/100 Dollars ($859.70) together with interest thereon from Aug. 1, 1916, at six per cent per annum until paid; and that the plaintiff have and recover of and from said Chicago & Alton Railroad Company the further sum of Eighty Five and 97/100 Dollars ($85.97) as attorneys fees for prosecuting this action, which sum the court finds to be reasonable, which attorneys' fees shall be taxed as costs herein; and that the plaintiff also have and recover of said Chicago & Alton Railroad Company his costs herein laid out and expended, and for all of which let execution issue.

It is further ordered, adjudged and decreed by the court that plaintiff E. B. Spiller do have and recover of and from the defendant Missouri Pacific Railway Company the sum of Three Hundred Ten and 96/100 Dollars ($310.96) being the amount of principal and interest ordered by the Interstate Commerce Commission to be paid to said plaintiff, E. B. Spiller, by the said Missouri Pacific Railway Company on or before June 15, 1914, and do have and recover of and from said defendant the further sum of Thirty-nine and 63/100 Dollars ($39.63) being the interest at six per cent per annum on said sum of $310.96 from June 15, 1914 to Aug. 1, 1916, being a total sum of Three Hundred Fifty and 59/100 Dollars ($350.59) together with interest thereon from Aug. 1, 1916 at six per cent per annum until paid; and that the plaintiff have and recover of and

from said Missouri Pacific Railway Company the further sum of Thirty-five and 05/100 Dollars ($35.05) as attorneys' fees for prosecuting this action, which sum the court finds to be reasonable which attorneys' fees shall be taxed as costs herein; and that the plaintiff also have and recover of said Missouri Pacific Railway Company his costs herein laid out and expended, for all of which let execution issue.

It is further ordered, adjudged and decreed by the court that plaintiff E. B. Spiller do have and recover of and from the defendant St. Louis Iron Mountain & Southern Railway Company the sum of Three Thousand Six Hundred Ninety-four and
53 86/100 Dollars, ($3,694.86) being the amount of principal and interest ordered by the Interstate Commerce Commission to be paid to the plaintiff E. B. Spiller by the said St. Louis Iron Mountain & Southern Railway Company on or [before] June 15, 1914, and do have and recover of and from said defendant the further sum of Four Hundred Seventy One and 09/100 Dollars ($471.09) being the interest at six per cent per annum on said sum of $3,694.86 from June 15, 1914, to Aug. 1, 1916, being a total sum of Four Thousand One Hundred Sixty-five and 95/100 Dollars ($4,165.95) together with interest thereon from Aug. 1, 1916 at six per cent per annum until paid; and that plaintiff have and recover of and from St. Louis Iron Mountain & Southern Railway Company the further sum of Four Hundred Sixteen and 59/100 Dollars ($416.59) as attorneys' fees for prosecuting this action, which sum the court finds to be reasonable, which attorneys' fees shall be taxed as costs herein; and that the plaintiff also have and recover of said St. Louis Iron Mountain & Southern Railway Company his costs herein laid out and expended, for all of which let execution issue.

It is further ordered, adjudged and decreed by the court that plaintiff E. B. Spiller do have and recover of and from the defendant St. Louis & San Francisco Railroad Company the sum of Twenty-seven Thousand Six Hundred Eighty Two and 75/100 Dollars ($27,682.75) being the amount of principal and interest ordered by the Interstate Commerce Commission to be paid to the plaintiff E. B. Spiller by the said St. Louis & San Francisco Railroad Company on or before June 15, 1914, and do have and recover of and from said defendant the further sum of Two Thousand Five Hundred Twenty Nine and 56/100 Dollars, ($2,529.56) being the interest at six per cent per annum on said sum of $27,682.75 from June 15, 1914, to Aug. 1, 1916, being a total sum of Thirty Thousand Two Hundred Twelve and 31/100 Dollars ($30,212.31) together with interest thereon from Aug. 1, 1916 at six per cent per annum until paid; and that plaintiff have and recover of and from said St. Louis & San Francisco Railroad Company the further sum of Three Thousand Twenty One and 23/100 Dollars ($3,021.23) as attorneys' fees for prosecuting this action, which sum the court finds to be reasonable, which attorneys' fees shall be taxed as costs herein; and that the plaintiff also have and recover of said St. Louis & San Francisco Railroad Company his costs herein laid out and expended, for all of which let execution issue.

It is further ordered, adjudged and decreed by the court that plaintiff E. B. Spiller do have and recover of and from the
54 defendant Chicago Rock Island & Pacific Railway Company the sum of Eighteen Thousand Thirty Nine and 97/100 Dollars ($18,039.97) being the amount of principal and interest ordered by the Interstate Commerce Commission to be paid to the plaintiff E. B. Spiller by the said Chicago Rock Island & Pacific Railway Company on or before June 15, 1914, and do have and recover of and from said defendant the further sum of Twenty-three Hundred and 08/100 Dollars ($2,300.08) being the interest at six per cent per annum on said sum of $18,039.97 from June 15, 1914, to Aug. 1, 1916, being a total sum of twenty Thousand Three Hundred Forty and 05/100 Dollars ($20,340.05) together with interest thereon from Aug. 1, 1916, at six per cent per annum until paid; and that plaintiff have and recover of and from said Chicago Rock Island & Pacific Railway Company the further sum of Two Thousand Thirty Four Dollars ($2,034.00) as attorneys' fees for prosecuting this action, which sum the court finds to be reasonable, which attorneys' fees shall be taxed as costs herein; and that the plaintiff also have and recover of said Chicago Rock Island & Pacific Railway Company his costs herein laid out and expended, for all of which let execution issue.

It is further ordered, adjudged and decreed by the Court that plaintiff E. B. Spiller do have and recover of and from the defendant, Illinois Central Railroad Company the sum of One Thousand Five Hundred Eighty-six and 18/100 Dollars ($1,586.18) being the amount of principal and interest ordered by the Interstate Commerce Commission to be paid to the plaintiff E. B. Spiller by the said Illinois Central Railroad Company on or before June 15, 1914, except an item of Three Hundred Eighty Two and 80/100 Dollars ($382.80) for 58 cars shipped by T. F. B. Sothen, from Monahans, Texas to Chicago territory, and do have and recover of and from said defendant the further sum of Two Hundred and 23/100 Dollars, ($202.23) being the interest at six per cent per annum on said sum of $1,586.18 from June 15, 1914 to Aug. 1, 1916, being a total sum of Seventeen Hundred Eighty-eight and 41/100 Dollars ($1,788.41) together with interest thereon from Aug. 1, 1916 at six per cent per annum until paid; and that plaintiff have and recover of and from said Illinois Central Railroad Company the further sum of One Hundred and Seventy-Eight and 84/100 Dollars ($178.84) as attorneys' fees for prosecuting this action, which sum the court finds to be reasonable which attorneys' fees shall be taxed as costs herein; and that the plaintiff also have and recover of said
55 Illinois Central Railroad Company his costs herein laid out and expended, for all of which let execution issue.

It is further ordered, adjudged and decreed by the Court that plaintiff E. B. Spiller do have and recover of and from the defendant Missouri Kansas & Texas Railway Company the sum of Fifty-Four Thousand Seven Hundred Seventy Nine and 91/100 Dollars ($54,779.91) being the amount of principal and interest ordered by the Interstate Commerce Commission to be paid to the plaintiff E. B. Spiller by the said Missouri, Kansas & Texas Railway Company on

or before June 15, 1914, and do have and recover of and from said defendant the further sum of Six Thousand Nine Hundred Eighty Four and 43/100 Dollars ($6,984.43) being the interest at six per cent per annum on said sum of $54,779.91 from June 15, 1914, to Aug. 1, 1916, being a total sum of Sixty One Thousand Seven Hundred Sixty Four and 34/100 Dollars ($61,764.34) together with interest thereon from Aug. 1, 1916, at six per cent per annum until paid; and that plaintiff have and recover of and from said Missouri, Kansas & Texas Railway Company the further sum of Six Thousand One Hundred Seventy Six and 43/100 Dollars ($6,176.43) as attorneys' fees for prosecuting this action, which sum the court finds to be reasonable, which attorneys' fees shall be taxed as costs herein; and that the plaintiff also have and recover of said Missouri, Kansas & Texas Railway Company his costs herein laid out and expended, for all of which let execution issue.

Enter.

ARBA S. VAN VALKENBURGH, *Judge.*

Aug. 16, '16.

To which action of the court the defendants and each of them at the time excepted and still except.

(*Petition for Writ of Error by The Atchison, Topeka and Santa Fe Ry. Co. Filed in the District Court on August* 28, 1916.)

Now comes The Atchison, Topeka and Santa Fe Railway Company, one of the defendants herein, and alleges that on the 16 day of August, 1916, this Court entered judgment herein in favor of said plaintiff, and against this defendant, in the sum of $38,292.02 [Dollars] with interest at the rate of six per cent per annum and all costs of suit, in which judgment and proceedings, certain errors were committed to the prejudice of this defendant, all of which will in detail appear in the assignment of errors which is filed with this petition;

56 Wherefore, the said The Atchison, Topeka and Santa Fe Railway Company, prays that a writ of error issue for the correction of the errors so complained of; that a transcript of the record, proceedings and pleadings in this case, duly authenticated, be sent to the United States Circuit Court of Appeals for the Eighth Circuit in order that said judgment so rendered be reversed, and that judgment may be rendered in favor of this defendant and against said plaintiff.

THOMAS R. MORROW,
GARDINER LATHROP,
ROBERT DUNLAP,
T. J. NORTON,
Attorneys for Defendant The Atchison, Topeka & Santa Fe Railway Company.

(*Assignment of Errors by The Atchison, Topeka and Santa Fe Ry. Co. Filed in the District Court on Aug.* 28, 1916.

Comes The Atchison, Topeka and Santa Fe Railway Company, one of the defendants in this case, by its attorneys undersigned, and, in connection with its petition for writ of error, says that in the record and proceedings of this cause and during the trial thereof in said District Court error intervened to its prejudice; and it therefore makes the following assignment of errors upon which it will rely in the prosecution of a writ of error from the Circuit Court of Appeals for the Eighth Circuit:

I.

The Court erred in overruling the demurrer of the defendant to the effect that the petition of the plaintiff did not state a cause of action, in that it was not averred in said petition that claims for damages had been filed, either by Spiller as assignee or by his assignors, within the two-year limitation fixed by the Act to Regulate Commerce.

II.

The Court erred in overruling the demurrer of the defendant to the effect that there was a misjoinder of causes of action, as well as a misjoinder of parties defendant, in that in the petition plaintiff in each action was a separate plaintiff as against each of said several defendants.

57 III.

The Court erred in overruling the demurrer of defendant in holding that under the Act to Regulate Commerce an assignee of shippers of live stock is authorized to file claims with the Interstate Commerce Commission for damages to him as assignee arising out of the payment of freight rates by his assignor.

IV.

The Court erred in refusing to hold that an award of damages by the Interstate Commerce Commission to an assignee of shippers is void under the Act to Regulate Commerce.

V.

The Court erred in overruling the objection of the defendant to the introduction in evidence of the decision and order of the Interstate Commerce Commission awarding reparation to the plaintiff as assignee and against the defendant, which was received and marked as "Plaintiff's Exhibit 1," said objection of defendant being that it appeared upon the fact of said exhibit that the decision and

order were made without jurisdiction and contrary to the two years limitation in the Act to Regulate Commerce, as no shipper had filed a claim for reparation, within that time, for which reason his right and the right of all shippers was barred; and also because the Commission was without jurisdiction and its order was void because the Act does not give the benefit of an award to an assignee; and also because the order and award granted interest on claims before they were liquidated; and also because for the court to accept said exhibit as sufficient to make a prima facie case in favor of the plaintiff would be to deprive the carriers of their rights and property without due process of law, in violation of the 14th Amendment of the Constitution.

VI.

The Court erred in refusing defendant's declaration of law in the nature of a demurrer to the evidence at the close of plaintiff's case.

VII.

The Court erred in refusing defendant's declaration of law in the nature of a demurrer to the evidence at the close of all the evidence.

VIII.

The Court erred in holding that the Interstate Commerce Commission has jurisdiction under the Act to Regulate Com-
58 merce of claims against common carriers where it appears that no shipper paying the rates complained of had filed a claim for reparation with the Commission within the two-year limitation of the Act, and that therefore no bar of limitations was presented.

IX.

The Court erred in overruling and denying each of the declara tions of law requested by the defendants, as follows:

1. That the claims for reparation set out in the petitions in this case, are barred by the two-year limitation of the Act to Regulate Commerce, because no claim was filed with the Interstate Commerce Commission by any shipper who paid the freight rate condemned by the Commission, or by any one in his behalf.

2. That neither the plaintiff Spiller nor his alleged assignor Crowley, was authorized by the Act to Regulate Commerce to file claims for reparation with the Interstate Commerce Commission, and therefore the filings made by them were void and of no effect.

3. That the Interstate Commerce Commission was without jurisdiction to entertain the claims filed by the plaintiff Spiller, and by said Crowley, or to make an award of reparation thereon, and therefore the award on which this action is based was unwarranted, contrary to law and void.

4. That the Interstate Commerce Commission did not have before it any legal or competent evidence of an assignment by any shipper to the plaintiff Spiller, or to said Crowley, relating to any of the claims involved herein, and its finding of an assignment thereof was unsupported by competent evidence and was therefore void and contrary to law.

5. That the Interstate Commerce Commission had no evidence before it of injury done to the plaintiff Spiller or his alleged assignors by the defendant, or a pecuniary or other damage sustained by said Spiller or said alleged assignors by reason of anything done or omitted to be done in contravention of the Act to regulate Commerce, and therefore the finding and award made by the Commission to Spiller was contrary to law and void.

6. That there was no evidence before the Interstate Commerce Commission of the payment of freight by any individual, and the finding and award of damages against defendant was therefore unsupported by the evidence and contrary to the Act and void.

59 7. That the award made by the Interstate Commerce Commission against the defendant as a delivering carrier in cases where the haul and the revenue derived from the rate condemned by the Commission were participated in by other carriers, was contrary to law and void, and would deprive defendants of their property without due process of law.

8. That the holding of the Interstate Commerce Commission at the hearing that "the payment of an unreasonable charge imports damage—that of itself shows damage" was contrary to law, and its findings that the plaintiff Spiller as assignee was thereby damaged, was a nullity.

9. That the Interstate Commerce Commission erred in not granting the motion of the defendant to dismiss Spiller's petition for reparation for failure of proof of damage done by defendant to Spiller, in violation of the Act to Regulate Commerce.

10. That the Commission exceeded its statutory power in prescribing in the form of an order of reparation a retroactive rate for a term of more than two years preceding the date of its award and order, and also in prescribing a maximum rate to be charged for a term of two years after said date, for the reason that the Act to Regulate Commerce empowers it to prescribe a rate for the future only.

11. That the award of interest made by the Interstate Commerce Commission against the defendant, and in favor of the plaintiff Spiller, on unliquidated damages for a time prior to the date the damages were definitely ascertained, was contrary to law and void.

12. That the award of any interest by the Interstate Commerce Commission to the plaintiff Spiller was contrary to the Act to Regulate Commerce and void.

13. That the evidence here before the court is insufficient in law to warrant or support a judgment.

14. That upon the entire record and the evidence, and under the law, judgment should be entered herein for the defendant.

15. The Court declares the law to be that in no event can all or any of the plaintiffs herein recover against any or all of the defend-

ants herein, who are sued as the final or delivering carrier in any amount or for any sum in excess of the amount, if any, collected and retained by such delivering or final carrier, as its respective part or share due to and retained by it under the rules, regulations or agreements existing among said carriers, initial, intermediate or final, in respect to the division of freights received on account of the shipments referred to and mentioned in the findings and order of reparation made by the Interstate Commerce Commission.

16. The Court declares the law to be that the finding of the facts and award of reparation herein by the Interstate Commerce Commission, is wholly unsupported by any legal or competent evidence, and for the court to accept the same as sufficient to make it a prima facie case in favor of all or any of the plaintiffs herein against all or any of the defendants herein, would be to deprive the said defendants of their rights and property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

X.

The Court erred in holding that the Interstate Commerce Commission had evidence before it to support an award of reparation in favor of Spiller as assignee.

XI.

The Court erred in holding that the Interstate Commerce Commission had power to make and that it probably made an award of reparation where there was no proof of damage sustained to be repaired.

XII.

The Court erred in holding that the measure of damages in this case was the difference between the rate condemned by the Interstate Commerce Commission and the rate held by the Commission to be reasonable, in the absence of evidence of any character showing, or tending to show, that either plaintiff or any of his alleged assignors, had in fact paid the rates condemned or suffered any pecuniary damage by reason of the payment of said rates.

XIII.

The Court erred in holding that there was competent evidence or sufficient evidence, or any evidence before the Interstate Commerce Commission, upon which it could find there were valid assignments of the claims sued on by the plaintiff Spiller.

XIV.

The Court erred in holding that the Interstate Commerce Commission has authority to allow interest on claims arising out
61 of rates paid before such claims for damages have been liquidated.

XV.

The Court erred in rendering and entering a judgment in this cause against each of the defendants and in favor of the plaintiff.

THOMAS R. MORROW,
GARDINER LATHROP,
ROBERT DUNLAP,
T. J. NORTON,
Attorneys for Said Defendant.

August 28, 1916.

(*Order Allowing Writ of Error, etc., to The Atchison, Topeka and Santa Fe Ry. Co.*)

In pursuance of the Petition for Writ of Error filed *hereby* by The Atchison, Topeka and Santa Fe Railway Company, it is hereby ordered that a Writ of Error be and it is allowed from the United States Circuit Court of Appeals for the Eighth Circuit upon the filing by the said defendant of a good and sufficient bond in the sum of Fifty Thousand Dollars ($50,000.00) to be approved by the Court, conditioned that the said defendant prosecute said writ with effect and answer all damages and costs if it fails to make its plea good.

It is further ordered that all proceedings against The Atchison, Topeka and Santa Fe Railway Company, in this court be and they are hereby stayed and suspended, until the determination of said writ of error by said Circuit Court of Appeals.

Dated this 28th day of August, 1916.

ARBA S. VAN VALKENBURGH, *Judge.*

(*Bond on Writ of Error Sued Out by The Atchison, Topeka and Santa Fe Ry. Co. Filed in the District Court on August* 28, 1916.)

Know All Men By These Presents, That we, The Atchison, Topeka and Santa Fe Railway Company, a corporation organized and existing under the laws of Kansas, and A. C. Jobes — H. T. Abernathy as surety, are held and firmly bound unto E. B. Spiller, in the sum of Fifty Thousand Dollars ($50,000), lawful money of the
62 United States of America, for the payment of which, well and truly to be made, we bind ourselves, our heirs, successors and assigns, jointly and severally, firmly by these presents.

Whereas, in the above entitled cause, said The Atchison, Topeka and Santa Fe Railway Company, has prosecuted its writ of error to

the United States Circuit Court of Appeals for the Eighth Circuit to reverse the judgment rendered in said cause,

Now, Therefore, the condition of this obligation is such that if The Atchison, Topeka and Santa Fe Railway Company shall prosecute its writ of error to effect and answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
By T. J. NORTON,
Its General Attorney.
A. C. JOBES,
H. T. ABERNATHY,
Surety.

Approved this 28th day of August, 1916, by
ARBA S. VAN VALKENBURGH,
District Judge.

(*Petition for Writ of Error by the Chicago & Eastern Illinois R. R. Co. Filed in the District Court on August* 28, 1916.)

Now comes the Chicago and Eastern Illinois Railroad Co., plaintiff in error, and alleges and shows to the court that on the 16th day of August 1916, this court entered judgment herein in favor of said defendant in error, and against said plaintiff in error, in the sum of Twenty-two Hundred Sixty Nine and 76/100 ($2269.76) Dollars, with interest at the rate of six per cent per annum, and all costs of suit, in which decision, judgment and proceedings, certain errors were committed to the prejudice of plaintiff in error, all of which will more in detail appear in the assignment of errors which is filed with this petition.

Wherefore, the said Chicago and Eastern Illinois Railroad Co., plaintiff in error, prays that a writ of error may issue for the
63 correction of the errors so complained of; that a transcript of the record, proceedings and pleadings in this case, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit; that said judgment so rendered be reversed, vacated, set aside and held for naught, and that judgment may be rendered in favor of plaintiff in error and against defendant in error

H. T. DICK AND
COWHERD, INGRAHAM & DURHAM,
Attorney- for Plaintiff in Error.

(*Assignment of Errors by the Chicago & Eastern Illinois R. R. Co. Filed in the District Court on Aug. 28, 1916.*)

Comes the Plaintiff in Error above named, by its attorneys undersigned, and in connection with its petition for writ of error, says, that in the record and proceedings of this cause, and during the trial thereof in said District Court, error intervened to its prejudice;

and it therefore makes the following assignment of errors, upon which it will rely in the prosecution of a writ of error from the Circuit Court of Appeals for the Eighth Circuit:

I.

The Court erred in overruling the demurrer of the plaintiff in error (defendant below) to the effect that the petition of the plaintiff did not state a cause of action, in that it was not averred in said complaint that claims for damages had been filed, either by Spiller as assignee, or by his assignors, within the two year limitation fixed by the Act to Regulate Commerce.

II.

The Court erred in over-ruling the demurrer of the plaintiff in (defendant below) to the effect that there was a misjoinder of causes of action, as well as a misjoinder of parties defendant, in that in the petition plaintiff in each action was a separate plaintiff as against each of said several defendants.

III.

The Court erred in over-ruling the demurrer of plaintiff in error (defendant below) in holding that under the Act to Regulate Commerce, an assignee of shippers of live stock is authorized to
64 file claims with the Interstate Commerce Commission for damages to him as assignee, arising out of the payment of freight rates by his assignor.

IV.

The Court erred in refusing to hold that an award of damages by the Interstate Commerce Commission to an assignee of shippers is void under the Act to Regulate commerce.

V.

The Court erred in over-ruling the objection of the plaintiff in error (defendant below) to the introduction in evidence of the decision and order of the Interstate Commerce Commission, awarding reparation to the plaintiff as assignee and against the defendant, which was received and marked as "Plaintiff's Exhibit 1," said objection of defendant being that it appeared upon the face of said exhibit that the decision and order were made without jurisdiction, and contrary to the two years limitation in the Act to Regulate Commerce, as no shipper had filed a claim for reparation within that time, therefore his right and the right of all shippers was barred; also because the Commission was without jurisdiction and its order simply void because of the fact that the Act does not give the benefit of an award to an assignee, and further, because the order and award

granted interest on claims before they were liquidated; and further, that for the court to accept said exhibit as sufficient to make a prima facie case in favor of the plaintiff would be to deprive the carriers of their rights and property without due process of law, in violation of the 14th Amendment of the Constitution.

VI.

The court erred in refusing plaintiff in error's declaration of law in the nature of a demurrer to the evidence, offered at the close of plaintiff's case.

VII.

The Court erred in refusing plaintiff in error's declaration of law in the nature of a demurrer to the evidence, offered at the close of all the evidence.

VIII.

The Court erred in holding that the Interstate Commerce Commission has jurisdiction under the Act to regulate Commerce
65 of claims against common carriers where it appears that no shipper paying the rates complained of had filed a claim for reparation with the Commission within the two year limitation of the Act, and that therefore no bar of limitations was presented.

IX.

The Court erred in overruling and denying each of the declarations of law requested by the defendants, as follows:

1. That the claims for reparation set out in the petitions in this case, are barred by the two-year limitation of the Act to Regulate Commerce, because no claim was filed with the Interstate Commerce Commission by any shipper who paid the freight rate [eondemed] by the Commission, or by any one in his behalf.

2. That neither the plaintiff Spiller nor his alleged assignor Crowley, was authorized by the Act to Regulate Commerce to file claims for reparation with the Interstate Commerce Commission, and therefore the filings made by them were void and of no effect.

3. That the Interstate Commerce Commission was without jurisdiction to entertain the claims filed by the plaintiff Spiller, and by said Crowley, or to make an award of reparation thereon, and therefore the award on which this action is based is unwarranted, contrary to law and void.

4. That the Interstate Commerce Commission did not have before it any legal or competent evidence of an assignment by any shipper to the plaintiff Spiller, or to said Crowley, relating to any of the claims involved herein, and its finding of an assignment thereof was unsupported by competent evidence and was therefore void and contrary to law.

5. That the Interstate Commerce Commission had no evidence before it of injury done to the plaintiff Spiller or his alleged assignors by the defendant, or a pecuniary or other damage sustained by said Spiller or said alleged assignors by reason of anything done or omitted to be done in contravention of the Act to Regulate Commerce, and therefore the finding and award made by the Commission to Spiller was contrary to law and void.

66 6. That there was no evidence before the Interstate Commerce Commission of the payment of freight by any individual, and the finding and award of damages against defendant was therefore unsupported by the evidence and contrary to the Act and void.

7. That the award made by the Interstate Commerce [Commissouri] against the defendant as a delivering carrier in cases where the haul and the revenue derived from the rate [comdemed] by the Commission were participated in by other carriers, was contrary to law and void, and would deprive defendants of their property without due process of law.

8. That the holding of the Interstate Commerce Commission at the hearing that "the payment of an unreasonable charge imports damage—that of itself shows damage" was contrary to law, and its findings that the plaintiff Spiller as assignee was thereby damaged was a nullity.

9. That the Interstate Commerce Commission erred in not granting the motion of the defendant to dismiss Spiller's petition for reparation, for failure of proof of damage done by defendant to Spiller, in violation of the Act to Regulate Commerce.

10. That the Commission exceeded its statutory power in prescribing in the form of an order of reparation a retroactive rate for a term of more than two years preceding the date of its award and order, and also in prescribing a maximum rate to be charged for a term of two years after said date, for the reason that the Act to Regulate Commerce empowers it to prescribe a rate for the future only.

11. That the award of interest made by the Interstate Commerce Commission against the defendant, and in favor of the plaintiff Spiller, on unliquidated damages for a time prior to the date the damages were definitely ascertained, was contrary to law and void.

12. That the award of any interest by the Interstate Commerce Commission to the plaintiff Spiller was contrary to the Act to Regulate Commerce and void.

13. That the evidence here before the court is insufficient in law to warrant or support a judgment.

14. That upon the entire record and the evidence, and under the law, judgment should be entered herein for the defendant.

67 15. The Court declares the law to be that in no event can all or any of the plaintiffs herein recover against any or all of the defendants herein, who are sued as the final or delivering carrier in any amount or for any sum in excess of the amount, if any, collected and retained by such delivering or final carrier, as its respective part or share due to and existing among said carriers, initial, intermediate or final, in respect to the diversion of freight re-

ceived on account of the shipments referred to and mentioned in the findings and order of reparation made by the Interstate Commerce Commission.

16. The Court declares the law to be that the finding of the facts and award of reparation herein by the Interstate Commerce Commission, is wholly unsupported by any legal or competent evidence, and for the court to accept the same as sufficient to make it a prima facie case in favor of all or any of the plaintiffs herein against all or any of the defendants herein, would be to deprive the said defendants of their rights and property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

X.

The Court erred in holding that the Interstate Commerce Commission had evidence before it to support an award of reparation in favor of Spiller as assignee.

XI.

The Court erred in holding that the Interstate Commerce Commission had power to make and that it properly made an award of reparation where there was no proof of damage sustained to be repaired.

XII.

The Court erred in holding that the measure of damage or actionable damages in this case was the difference between the rate condemned by the Interstate Commerce Commission; and the rate held by the Commission to be reasonable, in the absence of evidence of any character showing, or tending to show, that either plaintiff or any of his alleged assignors, had in fact paid the rates condemned, or suffered any pecuniary damages by reason of the payment of said rates.

XIII.

The Court erred in holding that there was competent evidence or sufficient evidence, or any evidence before the Interstate Com-
68 merce Commission, upon which it could find there was valid assignments of the claims sued on by the plaintiff Spiller.

XIV.

The Court erred in holding that the Interstate Commerce Commission had authority to allow interest on claims arising out of rates paid before such claims for damages have been liquidated.

XV.

The Court erred in over-ruling and denying the motion of the defendants for a new trial, and in over-ruling and denying the motion of defendants for arrest of judgment.

XVI.

The court erred in rendering and entering a judgment in this cause against each of the defendants and in favor of the plaintiff.

H. T. DICK AND
COWHERD, INGRAHAM & DURHAM,
Attorneys for Plaintiff in Error.

August 28th, 1916.

(*Bond on Writ of Error Sued Out by the Chicago & Eastern Illinois R. R. Co. Filed in the District Court on August* 30, 1916.)

Know All Men by These Presents, That the Chicago and Eastern Illinois Railroad Company, as principal and United States Fidelity & Guaranty Company as surety, are held and firmly bound unto E. B. Spiller in the sum of [T-o] Hundred and Fifty Dollars to be paid to the said E. B. Spiller, for the payment of which well and truly to be made we bind ourselves, our successors and assigns firmly by these presents.

Sealed with our seals, this 30th day of August, 1916.

Whereas, the above named, Chicago and Eastern Illinois Railroad Company has sued out a Writ of Error to the United States Circuit Court of Appeals for the Eighth Circuit to reverse a judgment rendered in the above entitled cause by the District Court of the United States, for the Western Division of the Western District of Missouri, on the 16th day of August, 1916.

69 Now therefore, the condition of this obligation is such that, if the above named Chicago and Eastern Illinois Railroad Company shall prosecute said writ of error to effect and answer all costs if it fails to make good its appeal, then this obligation shall be void, otherwise to remain in full force and virtue.

[SEAL.] CHICAGO AND EASTERN ILLINOIS RAILROAD COMPANY,
By HOMER T. DICK, *Its General Solicitor.*
UNITED STATES FIDELITY & GUARANTY COMPANY,
By W. R. TAYLOR, *Attorney in Fact.*

Bond approved and accepted this 30th day of August, 1916.
[SEAL.] ARBA S. VAN VALKENBURGH, *Judge.*

(*Petition for Writ of Error by Chicago & Alton R. R. Co. Filed in the District Court on August* 28, 1916.)

Now comes the Chicago & Alton Railroad Company plaintiff in error, and alleges and shows to the court that on the 16th day of August, 1916, this court entered judgment herein in favor of said defendant in error, and against said plaintiff in error, in the sum of Nine hundred forty five and 67/100 ($945.67) Dollars, with interest at the rate of six per cent per annum, and all costs of suit, in which decision, judgment and proceedings, certain errors were committed to

the prejudice of the plaintiff in error, all of which will more in detail appear in the assignment of errors which is filed with this petition.

Wherefore, the said Chicago & Alton Railroad Company plaintiff in error, prays that a writ of error may issue for the correction of the errors so complained of; that a transcript of the record, proceedings and pleadings in this case, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit; that said judgment so rendered be reversed, vacated, set aside and held for naught, and that judgment may be rendered in favor of plaintiff in error and against defendant in error.

C. M. MILLER,
Attorney for Plaintiffs in Error.

70 (*Assignment of Errors by Chicago & Alton R. R. Co. Filed in the District Court on August* 28, 1916.)

Comes the Plaintiff in Error above named, by its attorneys undersigned, and in connection with its petition for writ of error, says, that in the record and proceedings of this cause, and during the trial thereof in said District Court, error intervened to its prejudice; and it therefore makes the following assignment of errors, upon which it will rely in the prosecution of a writ of error from the Circuit Court of Appeals for the Eighth Circuit:

I.

The Court erred in overruling the demurrer of the plaintiff in error (defendant below) to the effect that the petition of the plaintiff did not state a cause of action, in that it was not averred in said complaint that claims for damages had been filed, either by Spiller as assignee, or by his assignors, within the two year limitations fixed by the Act to Regulate Commerce.

II.

The Court erred in overruling the demurrer of the plaintiff in error (defendant below) to the effect that there was a misjoinder of causes of action, as well as a misjoinder of parties defendant, in that in the petition plaintiff in each action was a separate plaintiff as against each of said several defendants.

III.

The Court erred in overruling the demurrer of plaintiff in error (defendant below) in holding that under the Act to Regulate Commerce, an assignee of shippers of live stock is authorized to file claims with the Interstate Commerce Commission for damages to him as assignee, arising out of the payment of freight rates by his assignor.

IV.

The Court erred in refusing to hold that an award of damages by the Interstate Commerce Commission to an assignee of shippers is void under the Act to Regulate Commerce.

V.

The Court erred in overruling the objection of the plaintiff in error (defendant below) to the introduction in evidence of the decision and order of the Interstate Commerce Commission, awarding reparation to the plaintiff as assignee and against the de-
71 fendant, which was received and marked as "Plaintiff's Exhibit 1," said objection of defendant being that it appeared upon the face of said exhibit that the decision and order were made without jurisdiction, and contrary to the two years' limitation in the Act to Regulate Commerce, as no shipper had filed a claim for reparation within that time, therefore his right and the right of all shippers was barred; also because the Commission was without jurisdiction and its order simply void because of the fact that the Act does not give the benefit of an award to an assignee, and further, because the order and award granted interest on claims before they were liquidated; and further, that for the court to accept said exhibit as sufficient to make a prima facie case in favor of the plaintiff would be to deprive the carriers of their rights and property without due process of law, in violation of the 14th Amendment of the Constitution.

VI.

The court erred in refusing plaintiff in error's declaration of law in the nature of a demurrer to the evidence, offered at the close of plaintiff's case.

VII.

The court erred in refusing plaintiff in error's declaration of the law in the nature of a demurrer to the evidence, offered at the close of all the evidence.

VIII.

The court erred in holding that the Interstate Commerce Commission has jurisdiction under the Act to Regulate Commerce of claims against common carriers where it appears that no shipper paying the rates complained of had filed a claim for reparation with the Commission within the two year limitation of the Act, and that therefore no bar of limitations was presented.

IX.

The court erred in overruling and denying each of the declarations of law requested by the defendants, as follows:

1. That the claims for reparation set out in the petitions in this case, are barred by the two-year limitation of the Act to Regulate Commerce, because no claim was filed with the Interstate Commerce Commission by any shipper who paid the freight rate [condem-ed] by the Commission, or by any one in his behalf.

72 2. That neither the plaintiff Spiller nor his alleged assignor Crowley, was authorized by the Act to Regulate Commerce to file claims for reparation with the Interstate Commerce Commission, and therefore the filings made by them were void and of no effect.

3. That the Interstate Commerce Commission was without juris diction to entertain the claims filed by the plaintiff Spiller, and by said Crowley, or to make an award of reparation thereon, and therefore the award on which this action is based is unwarranted, contrary to law and void.

4. That the Interstate Commerce Commission did not have before it any legal or competent evidence of an assignment by any shipper to the plaintiff Spiller, or to said Crowley, relating to any of the claims involved herein, and its finding of an assignment thereof was unsupported by competent evidence and was therefore void and contrary to law.

5. That the Interstate Commerce Commission had no evidence before it of injury done to the plaintiff Spiller or his alleged assignors by the defendant, or a pecuniary or other damage sustained by said Spiller or said alleged assignors by reason of anything done or omitted to be done in contravention of the Act to Regulate Commerce, and therefore the finding and award made by the Commission to Spiller was contrary to law and void.

6. That there was no evidence before the Interstate Commerce Commission of the payment of freight by any individual, and the finding and award of damages against defendant was therefore unsupported by the evidence and contrary to the Act and void.

7. That the award made by the Interstate Commerce [Commissouri] against the defendant as a delivering carrier in cases where the haul and revenue derived from the rate [condem-ed] by the Commission were participated in by other carriers, was contrary to law and void, and would deprive defendants of their property without due process of law.

8. That the holding of the Interstate Commerce Commission at the hearing that "the payment of an unreasonable charge imports damage—that of itself shows damage" was contrary to law, and its findings that the plaintiff Spiller as asignee was thereby damaged, was a nullity.

9. That the Interstate Commerce Commission erred in not granting the motion of the defendant to dismiss Spiller's petition for reparation, for failure of proof of damage done by defendant to Spiller, in violation of the Act to Regulate Commerce.

73 10. That the Commission exceeded its statutory power in prescribing in the form of an order of reparation a retroactive rate for a term of more than two years preceding the date of its award and order, and also in prescribing a maximum rate to be

charged for a term of two years after said date, for the reason that the Act to Regulate Commerce empowers it to prescribe a rate for the future only.

11. That the award of interest made by the Interstate Commerce Commission against the defendant, and in favor of the plaintiff Spiller, on unliquidated damages for a time prior to the date the damages were definitely ascertained, was contrary to law and void.

12. That the award of any interest by the Interstate Commerce Commission to the plaintiff Spiller was contrary to the Act to Regulate Commerce and void.

13. That the evidence here before the court is insufficient in law to warrant or support a judgment.

14. That upon the entire record and the evidence, and under the law, judgment should be entered herein for the defendant.

15. The Court declares the law to be that in no event can all or any of the plaintiffs herein recover against any or all of the defendants herein, who are sued as the final or delivering carrier in any amount or for any sum in excess of the amount, if any, collected and retained by such delivering or final carrier, as its respective part or share due to and existing among said carriers, initial, intermediate or final, in respect to the diversion of freight received on account of the shipments referred to and mentioned in the findings and order of reparation made by the Interstate Commerce Commission.

16. The Court declares the law to be that the finding of the facts and award of reparation herein by the Interstate Commerce Commission, is wholly unsupported by any legal or competent evidence, and for the court to accept the same as sufficient to make it a prima facie case in favor of all or any of the plaintiffs herein against all or any of the defendants herein, would be to deprive the said defendants of their rights and property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

74 X.

The Court erred in holding that the Interstate Commerce Commission had evidence before it to support an award of reparation in favor of Spiller as assignee.

XI.

The Court erred in holding that the Interstate Commerce Commission had power to make and that it properly made an award of reparation where there was no proof of damage sustained to be repaired.

XII.

The court erred in holding that the measure of damage or actionable damages in this case was the difference between the rate condemned by the Interstate Commerce Commission; and the rate held

by the Commission to be reasonable, in the absence of evidence of any character showing, or tending to show, that either plaintiff or any of his alleged assignors, had in fact paid the rates condemned, or suffered any pecuniary damage by reason of the payment of said rates.

XIII.

The Court erred in holding that there was competent evidence or sufficient evidence, or any evidence before the Interstate Commerce Commission, upon which it could find there was valid assignments of the claims sued on by the plaintiff Spiller.

XIV.

The Court erred in holding that the Interstate Commerce Commission *was* authority to allow interest on claims arising out of rates paid before such claims for damages have been liquidated.

XV.

The Court erred in over-ruling and denying the motion of the defendants for a new trial, and in overruling and denying the motion of the defendants for arrest of judgment.

75 XVI.

The court erred in rendering and entering a judgment in this cause against each of the defendants and in favor of the plaintiff.

C. M. MILLER &
SCARRITT, SCARRITT, JONES & MILLER,
Attorneys for Plaintiff in Error.

August —, 1916.

(*Bond on Writ of Error Sued Out by Chicago & Alton R. R. Co. Filed in the District Court on August* 28, 1916.)

Know All Men By These Presents, That we, The Chicago & Alton Railroad Company, a Corporation organized and existing under the laws of Illinois, and Chicago Bonding & Surety Co. as surety, are held and firmly bound unto E. B. Spiller, in the sum of One Thousand ($1,000.00) Dollars lawful money of the United States of America, for the payment of which well and truly to be made, we bind ourselves, our heirs, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, in the above entitled cause said The Chicago & Alton Railroad Company has prosecuted its writ of error to the United States Circuit Court of Appeals for the Eighth Circuit to reverse the judgment rendered in said cause.

Now, Therefore, the condition of this obligation is such that if The Chicago & Alton Railroad Company shall prosecute its writ of error to effect and answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

[SEAL.] THE CHICAGO & ALTON RAILROAD COMPANY,
By SCARRITT, SCARRITT, JONES & MILLER,
Its Attorneys of [Record].
CHICAGO BONDING AND SURETY COMPANY,
By WALTER FARADAY, *Attorney in Fact.*

Approved this 28th day of August 1916, by
ARBA S. VAN VALKENBURGH,
District Judge.

76 (*Petition for Writ of Error by Missouri Pacific Ry. Co. Filed in the District Court on August* 28, 1916.)

Now comes The Missouri Pacific Railway Company, plaintiff in error, and alleges and shows to the Court that on the 16th day of August, 1916, this Court entered judgment herein in favor of said defendant in error, and against said plaintiff in error, The Missouri Pacific Railway Company, in the sum of three Hundred eighty-five and 64/100 Dollars, with interest at the rate of six per cent per annum, and all costs of suit, in which decision, judgment and proceedings, certain errors were committed to the prejudice of plaintiff in error, all of which will more in detail appear in the assignment of errors which is filed with this petition;

Wherefore, the said The Missouri Pacific Railway Company, plaintiff in error, prays that a writ of error may issue for the correction of the errors so complained of; that a transcript of the record, proceedings and pleadings in this case, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit; that said judgment so rendered be reversed, vacated, set aside and held for naught, and that judgment may be rendered in favor of plaintiff in error and against defendant in error.

HENRY G. HERBEL AND
WHITE, HACKNEY & LYONS,
Attorneys for Plaintiff in Error.

(*Assignment of Errors by Missouri Pacific Ry. Co. Filed in the District Court on August* 28, 1916.)

Comes the plaintiff in error above named, by its attorney undersigned, and in connection with its petition for writ of error, says that in the record and proceedings of this cause, and during the trial thereof in said District Court, error intervened to its prejudice; and it therefore makes the following assignment of errors, upon which it

will rely in the prosecution of a writ of error from the Circuit Court of Appeals for the Eighth Circuit:

I.

The Court erred in overruling the demurrer of the plaintiff in error (defendant below), to the effect that the petition of the plaintiff did not state a cause of action, in that it was not averred in said complaint that claims for damages had been filed, either by Spiller as assignee, or by his assignors, within the two year limitations fixed by the Act to Regulate Commerce.

77

II.

The Court erred in overruling the demurrer of the plaintiff in error (defendant below), to the effect that there was a misjoinder of causes of action, as well as a misjoinder of parties defendant, in that in the petition plaintiff in each action was a separate plaintiff as against each of said several defendants.

III.

The Court erred in overruling the demurrer of plaintiff in error (defendant below) in holding that under the Act to Regulate Commerce, an assignee of shippers of live stock is authorized to file claims with the Interstate Commerce Commission for damages to him as assignee, arising out of the payment of freight rates by his assignor.

IV.

The Court erred in refusing to hold that an award of damages by the Interstate Commerce Commission to an assignee of shippers is void under the Act to Regulate Commerce.

V.

The Court erred in overruling the objection of the plaintiff in error (defendant below) to the introduction in evidence of the decision and order of the Interstate Commerce Commission, awarding reparation to the plaintiff as assignee and against the defendant, which was received and marked as "Plaintiff's Exhibit 1," said objection of defendant being that it appeared upon the face of said exhibit that the decision and order were made without jurisdiction, and contrary to the two years limitation in the Act to Regulate Commerce, as no shipper had filed a claim for reparation within that time, therefore his right and the right of all shippers was barred; also because the Commission was without jurisdiction and its order simply void because of the fact that the Act does not give the benefit of an award to an assignee, and further, because the order and award granted interest on claims before they were liquidated; and further, that for the court to accept said exhibit as sufficient to make a prima

facie case in favor of the plaintiff would be to deprive the carriers of their rights and property without due process of law, in violation of the 14th Amendment of the Constitution.

VI.

The Court erred in refusing plaintiff in error's declaration of law in the nature of a demurrer to the evidence, offered at the close of plaintiff's case.

78

VII.

The Court erred in refusing plaintiff in error's declaration of law in the nature of a demurrer to the evidence, offered at the close of all the evidence.

VIII.

The Court erred in holding that the Interstate Commerce Commission has jurisdiction under the Act to Regulate Commerce of claims against common carriers where it appears that no shipper paying the rates complained of had filed a claim for reparation with the Commission within the two year limitation of the Act, and that therefore no bar of limiations was presented.

IX.

The Court erred in overruling and denying each of the declarations of law requested by the defendant, as follows:

1. That the claims for reparation set out in the petitions in this case, are barred by the two year limitation of the Act to Regulate Commerce, because no claim was filed with the Interstate Commerce Commission by any shipper who paid the freight rate condemned by the Commission, or by any one in his behalf.

2. That neither the plaintiff Spiller nor his alleged assignor Crowley, was authorized by the Act to Regulate Commerce to file claims for reparation with the Interstate Commerce Commission, and therefore the filings made by them were void and of no effect.

3. That the Interstate Commerce Commission was without jurisdiction to entertain the claims filed by the plaintiff Spiller and by said Crowley, or to make an award of reparation thereon, and therefore the award on which this action is based was unwarranted, contrary to law and void.

4. That the Interstate Commerce Commission did not have before it any legal or competent evidence of an assignment by any shipper to the plaintiff Spiller, or to said Crowley, relating to any of the claims involved herein, and its finding of an assignment thereof was unsupported by competent evidence and was therefore void and contrary to law.

5. That the Interstate Commerce Commission had no evidence before it of injury done to the plaintiff Spiller or his alleged assignors by the defendant, or a pecuniary or other damage sustained

by said Spiller or said alleged assignors by reason of anything
79 done or omitted to be done in contravention of the Act to Regulate Commerce, and therefore the finding and award made by the Commission to Spiller was contrary to law and void.

6. That there was no evidence before the Interstate Commerce Commission of the payment of freight by any individual, and the finding and award of damages against defendant was therefore unsupported by the evidence and contrary to the Act and void.

7. That the award made by the Interstate Commerce Commission against the defendant as a delivering carrier in cases where the haul and the revenue derived from the rate condemned by the Commission were participated in by other carriers, was contrary to law and void, and would deprive defendant of its property without due process of law.

8. That the holding of the Interstate Commerce Commission at the hearing that "the payment of an unreasonable charge imports damage—that of itself shows damage" was contrary to law, and its findings that the plaintiff Spiller as assignee was thereby damaged, was a nullity.

9. That the Interstate Commerce Commission erred in not granting the motion of the defendant to dismiss Spiller's petition for reparation, for failure of proof of damages done by defendant, to Spiller, in violation of the Act to Regulate Commerce.

10. That the Commission exceeded its statutory power in prescribing in the form of an order of reparation a retroactive rate for a term of more than two years preceding the date of its award and order, and also in prescribing a maximum rate to be charged for a term of two years after said date, for the reason that the Act to Regulate Commerce empowers it to prescribe a rate for the future only.

11. That the award of interest made by the Interstate Commerce Commission against the defendant, and in favor of the plaintiff Spiller, on unliquidated damages for a time prior to the date the damages were definitely ascertained, was contrary to law and void.

12. That the award of any interest by the Interstate Commerce Commission to the plaintiff Spiller was contrary to the Act to Regulate Commerce and void.

13. That the evidence here before the Court is insufficient in law to warrant or support a judgment.

80 14. That upon the entire record and the evidence, and under the law, judgment should be entered herein for the defendant.

15. The Court declares the law to be that in no event can all or any of the plaintiffs herein recover against any or all of the defendants herein, who are sued as the final or delivering carrier in any amount or for any sum in excess of the amount, if any, collected and retained by such delivering or final carrier, as its respective part or share due to and retained by it under the rules, regulations or agreements existing among said carriers, initial, intermediate or final, in [*repsect*] to the division of freights received on account of the shipments referred to and mentioned in the findings and order of reparation made by the Interstate Commerce Commission.

16. The Court declares the law to be that the finding of the facts and award of reparation herein by the Interstate Commerce Commission, is wholly unsupported by any legal or competent evidence, and for the court to accept the same as sufficient to make it a prima facie case in favor of all or any of the plaintiffs herein against all or any of the defendants herein, would be to deprive the said defendants of their rights and property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

X.

The Court erred in holding that the Interstate Commerce Commission had evidence before it to support an award of reparation in favor of Spiller as assignee.

XI.

The court erred in holding that the Interstate Commerce Commission had power to make and that it properly made an award of reparation where there was no proof of damage sustained to be repaired.

XII.

The court erred in holding that the measure of damages or actionable damages in this case was the difference between the rate condemned by the Interstate Commerce Commission, and the rate held by the Commission to be reasonable, in the absence of evidence of any character showing, or tending to show, that either plaintiff or any of his alleged assignors, had in fact paid the rates condemned, or suffered any pecuniary damage by reason of the payment of said rates.

81 XIII.

The court erred in holding that there was competent evidence or sufficient evidence, or any evidence before the Interstate Commerce Commission, upon which it could find there *was* valid assignments of the claims sued on by the plaintiff Spiller.

XIV.

The Court erred in holding that the Interstate Commerce Commission has authority to allow interest on claims arising out of rates paid before such claims for damages have been liquidated.

XV.

The court erred in over-ruling and denying the motion of the defendants for a new trial, and in over-ruling and denying the motion of the defendants for arrest of judgment.

XVI.

The Court erred in rendering and entering a judgment in this cause against each of the defendants and in favor of the plaintiff.

XVII.

The Court erred in allowing and entering a judgment for an attorney's fee against each of the defendants and in favor of the plaintiff.

XVIII.

The Court erred in allowing and entering a judgment for an excessive, exorbitant and oppressive attorney's fee against each of the defendants and in favor of the plaintiff.

HENRY G. HERBEL AND
WHITE, HACKNEY & LYONS,
Attorneys for Plaintiff in Error.

August 28th, 1916.

(*Bond on Writ of Error Sued Out by Missouri Pacific Ry. Co. Filed in the District Court on August* 28, 1916.)

Know All Men By These Presents, That the Missouri Pacific Railway Company, as principal, and Wm. A. Wilson and H. H. Abernathy as sureties, are held and firmly bound unto E. B. Spiller in the sum of Two Hundred and fifty Dollars, to be paid to the
82 said E. B. Spiller, for the payment of which, well and truly to be made we bind ourselves, our successors and assigns firmly by these presents.

Sealed with our seals, this 28th day of August, 1916. [1916].

Whereas, the above named, The Missouri Pacific Railway Company, has sued out a writ of error to the United States Circuit Court of Appeals of the Eighth Judicial Circuit, to reverse a judgment rendered in the above entitled cause by the District Court of the United States, for the Western Division of the Western District of Missouri, on the 16th day of August, 1916.

Now, Therefore, the condition of this obligation is such that, if the above named The Missouri Pacific Railway Company shall prosecute said writ of error to effect and answer all costs if they fail to make good their said appeal, then this obligation shall be void, otherwise to remain in full force and virtue.

THE MISSOURI PACIFIC RAILWAY COMPANY,
By THOS. HACKNEY,
Its General Attorney.
[SEAL.] W. A. WILSON,
[SEAL.] H. T. ABERNATHY,
Sureties.

Bond approved and accepted this 28th day of August, 1916.
ARBA S. VAN VALKENBURGH, *Judge.*

(*Petition for Writ of Error by St. Louis, Iron Mountain & Southern Ry. Co. Filed in the District Court on August* 28, 1916.)

Now comes the St. Louis, Iron Mountain and Southern Railway Company, plaintiff in error, and alleges and shows to the Court that on the 16th day of August, 1916, this Court entered judgment herein in favor of said defendant in error, and against said plaintiff in error, the St. Louis, Iron Mountain and Southern Railway Company, in the sum of Four Thousand, five hundred, eighty-two and 54/100 Dollars, with interest at the rate of six per cent per annum, and all costs of suit, in which decision, judgment and proceedings, certain errors were committed to the prejudice of plaintiff in error, all of which will more in detail appear in the assignment of errors which is filed with this petition:

83 Wherefore, the said St. Louis, Iron Mountain and Southern Railway Company, plaintiff in error, prays that a writ of error may issue for the correction of the errors so complained of; that a transcript of the record, proceedings and pleadings in this case, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighty Circuit; that said judgment so rendered be reversed, vacated, set aside and held for naught, and that judgment may be rendered in favor of plaintiff in error and against defendant in error.

HENRY G. HERBEL AND
WHITE, HACKNEY & LYONS,
Attorneys for Plaintiff in Error.

(*Assignment of Errors by St. Louis, Iron Mountain & Southern Ry. Co. Filed in the U. S. District Court on August* 28, 1916.)

Comes the plaintiff in error above named, by its attorney undersigned, and in connection with its petition for writ of error, says that in the record and proceedings of this cause, and during the trial thereof in said District Court, error intervened to its prejudice; and it therefore makes the following assignment of errors, upon which it will rely in the prosecution of a writ of error from the Circuit Court of Appeals for the Eighth Circuit:

I.

The Court erred in overruling the demurrer of the plaintiff in error (defendant below), to the effect that the petition of the plaintiff did not state a cause of action, in that it was not averred in said complaint that claims for damages had been filed, either by Spiller as assignee, or by his assignors, within the two year limitations fixed by the Act to Regulate Commerce.

II.

The Court erred in overruling the demurrer of the plaintiff in error (defendant below), to the effect that there was a misjoinder of causes of action, as well as a misjoinder of parties defendant, in that in the petition plaintiff in each action was a separate plaintiff as against each of said several defendants.

III.

The Court erred in overruling the demurrer of plaintiff in error (defendant below) in holding that under the Act to Regulate Commerce, *as* assignee of shippers of live stock is au-
84 thorized to file claims with the Interstate Commerce Commission for damages to him as assignee, arising out of the payment of freight rates by his assignor.

IV.

The Court erred in refusing to hold that an award of damages by the Interstate Commerce Commission to an assignee of shippers is void under the Act to Regulate Commerce.

V.

The Court erred in overruling the objection of the plaintiff in error (defendant below) to the introduction in evidence of the decision and order of the Interstate Commerce Commission, awarding reparation to the plaintiff as assignee and against the defendant, which was received and marked as "Plaintiff's Exhibit 1," said objection of defendant being that it appeared upon the face of said exhibit that the decision and order were made without jurisdiction, and contrary to the two years' limitation in the Act to Regulate Commerce, as no shipper had filed a claim for reparation within that time, therefore his right and the right of all shippers was barred; also because the Commission was without jurisdiction and its order simply void because of the fact that the Act does not give the benefit of an award to an assignee, and further, because the order and award granted interest on claims before they were liquidated; and further, that for the court to accept said exhibit as sufficient to make a prima facie case in favor of the plaintiff would be to deprive the carriers of their rights and property without due process of law, in violation of the 14th Amendment of the Constitution.

VI.

The Court erred in refusing plaintiff in error's declaration of law in the nature of a demurrer to the evidence, offered at the close of plaintiff's case.

VII.

The Court erred in refusing plaintiff in error's declaration of law in the nature of a demurrer to the evidence, offered at the close of all evidence.

[VII.]

The Court erred in holding that the Interstate Commerce Commission has jurisdiction under the Act to Regulate Commerce of claims against common carriers where it appears that no shipper paying the rates complained of had filed a claim for repara-
85 tion with the Commission within the two year limitation of the Act, and that therefore no bar of limitations was presented.

IX.

The Court erred in over-ruling and denying each of the declarations of law requested by the defendant, as follows:

1. That the claims for reparation set out in the petitions in this case, are barred by the two year limitation of the Act to Regulate Commerce, because no claim was filed with the Interstate Commerce Commission by any shipper who paid the freight rate condemned by the Commission, or by any one in his behalf.

2. That neither the plaintiff Spiller nor his alleged assignor Crowley, was authorized by the Act to Regulate Commerce to file claims for reparation with the Interstate Commerce Commission, and therefore the filings made by them were void and of no effect.

3. That the Interstate Commerce Commission was without jurisdiction to entertain the claims filed by the plaintiff Spiller and by said Crowley, or to make an award of reparation thereon, and therefore the award on which this action is based was unwarranted, contrary to law and void.

4. That the Interstate Commerce Commission did not have before it any legal or competent evidence of an assignment by any shipper to the plaintiff Spiller, or to said Crowley, relating to any of the claims involved herein, and its finding of an assignment thereof was unsupported by competent evidence and was therefore void and contrary to law.

5. That the Interstate Commerce Commission had no evidence before it of injury done to the plaintiff Spiller, or his alleged assignors by the defendant, or a pecuniary or other damage sustained by said Spiller or said alleged assignors by reason of anything done or omitted to be done in contravention of the Act to Regulate Commerce, and therefore the finding and award made by the Commission to Spiller was contrary to law and void.

6. That there was no evidence before the Interstate Commerce Commission of the payment of freight by any individual, and the finding and award of damages against defendant was therefore unsupported by the evidence and contrary to the Act and void.

86 7. That the award made by the Interstate Commerce Commission against the defendant as a delivering carrier in cases where the haul and the revenue derived from the rate condemned by the Commission were participated in by other carriers, was contrary to law and void, and would deprive defendant of its property without due process of law.

8. That the holding of the Interstate Commerce Commission at the hearing that "the payment of an unreasonable charge imports damage—that of itself shows damage" was contrary to law, and its findings that the plaintiff Spiller as assignee was thereby damaged, was a nullity.

9. That the Interstate Commerce Commission erred in not granting the motion of the defendant to dismiss Spiller's petition for reparation, for failure of proof of damages done by defendant, to Spiller, in violation of the Act to Regulate Commerce.

10. That the Commission exceeded its statutory power in prescribing in the form of an order of reparation a retroactive rate for a term of more than two years preceding the date of its award and order, and also in prescribing a maximum rate to be charged for a term of two years after said date, for the reason that the Act to Regulate Commerce empowers it to prescribe the rate for the future only.

11. That the award of interest made by the Interstate Commerce Commission against the defendant, and in favor of the plaintiff Spiller, on unliquidated damages for a time prior to the date the damages were definitely ascertained, was contrary to law and void.

12. That the award of any interest by the Interstate Commerce Commission to the plaintiff Spiller was contrary to the Act to Regulate Commerce and void.

13. That the evidence here before the Court is insufficient in law to warrant or support a judgment.

14. That upon the entire record and the evidence, and under the law, judgment should be entered herein for the defendant.

15. The Court declares the law to be that in no event can all or any of the plaintiffs herein recover against any or all of the defendants herein, who are sued as the final or delivering carrier in any amount or for any sum in excess of the amount, if any, col-
87 lected and retained by such delivering or final carrier, as its respective part or share due to and retained by it under the rules, regulations or agreements existing among said carriers, initial, intermediate or final, in respect to the division of freights received on account of the shipments referred to and mentioned in the findings and order of reparation made by the Interstate Commerce Commission.

16. The Court declares the law to be that the finding of the facts and award of reparation herein by the Interstate Commerce Commission, is wholly unsupported by any legal or competent evidence, and for the court to accept the same as sufficient to make it a prima facie case in favor of all or any of the plaintiffs herein against all or any of the defendants herein, would be to deprive the said defendants of their rights and property without due process of law, in violation

of the Fourteenth Amendment of the Constitution of the United States.

X.

The Court erred in holding that the Interstate Commerce Commission had evidence before it to support an award of reparation in favor of Spiller as assignee.

XI.

The Court erred in holding that the Interstate Commerce Commission had power to make and that it properly made an award of reparation where there was no proof of damage sustained to be repaired.

XII.

The Court erred in holding that the measure of damages or actionable damages in this case was the difference between the rate condemned by the Interstate Commerce Commission, and the rate held by the Commission to be reasonable, in the absence of evidence of any character showing, or tending to show, that either plaintiff or any of his alleged assignors, had in fact paid the rates condemned, or suffered any pecuniary damage by reason of the payment of said rates.

XIII.

The Court erred in holding that there was competent evidence or sufficient evidence, or any evidence before the Interstate Commerce Commission, upon which it could find there was valid assignments of the claims sued on by the plaintiff Spiller.

88 XIV.

The Court erred in holding that the Interstate Commerce Commission has authority to allow interest on claims arising out of rates paid before such claims for damages have been liquidated.

XV.

The Court erred in over-ruling and denying the motion of the defendants for a new trial, and in over-ruling and denying the motion of the defendants for arrest of judgment.

XVI.

The Court erred in rendering and entering a judgment in this cause against each of the defendants and in favor of the plaintiff.

XVII.

The Court erred in allowing and entering a judgment for an attorney's fee against each of the defendants and in favor of the plaintiff.

XVIII.

The Court erred in allowing and entering a judgment for an excessive, exorbitant and oppressive attorney's fee against each of the defendants and in favor of the plaintiff.

HENRY G. HERBEL AND
WHITE, HACKNEY & LYONS,
Attorneys for Plaintiff in Error.

August 28th, 1916.

(*Bond on Writ of Error Sued Out by St. Louis, Iron Mountain & Southern Ry. Co. Filed in the District Court on August* 28, 1916.)

Know All Men By These Presents: That the St. Louis Iron Mountain and Southern Railway Company, as principal, and W. A. Wilson and H. T. Abernathy, as sureties, are held and firmly bound unto E. B. Spiller, in the sum of Five Hundred ($500.00) Dollars, to be paid to the said E. B. Spiller, for the payment of which, well and truly to be made, we bind ourselves, our successors and assigns firmly by these presents.

Sealed with our seals this 28th day of August, 1916.

89 Whereas, the above named, St. Louis, Iron Mountain and Southern Railway Company has sued out a writ of error to the United States Circuit Court of Appeals of the Eighth Judicial Circuit, to reverse a judgment rendered in the above entitled cause by the District Court of the United States, for the Western Division of the Western District of Missouri, on the 16th day of August, 1916.

Now, Therefore, the condition of this obligation is such that, if the above named St. Louis, Iron Mountain and Southern Railway Company shall prosecute said writ of error to effect and answer all costs if [*they*] fails to make good its said appeal, then this obligation shall be void, otherwise to remain in full force and virtue.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN
RAILWAY COMPANY,
By THOS. HACKNEY,
General Attorney.
[SEAL.] W. A. WILSON,
[SEAL.] H. T. ABERNATHY,
Sureties.

Approved Aug. 28/16.
ARBA S. VAN VALKENBURGH, *Judge.*

(*Petition for Writ of Error by St. Louis & San Francisco R. R. Co. Filed in the District Court on August* 28, 1916.)

Now comes the St. Louis & San Francisco Railroad Company, plaintiff in error, and alleges and shows to the court that on the 16th day of August 1916, this court entered judgment herein in favor of said defendant in error, and against said plaintiff in error, in the sum of Thirty-three Thousand Two Hundred Thirty-three 54/100 ($33,233.54) Dollars, with interest at the rate of six per cent per annum, and all costs of suit, in which decision, judgment and proceedings, certain errors were committed to the prejudice of plaintiff in error, all of which will more in detail appear in the assignment of errors which is filed with this petition.

Wherefore, the said St. Louis & San Francisco Railroad Company, plaintiff in error, prays that a writ of error may issue for the correction of the errors so complained of; that a transcript of the record, proceedings and pleadings in this case, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit; that said judgment so rendered be reversed, vacated, set aside and held for naught, and that judgment may be ren-
90 dered in favor of plaintiff in error and against defendant in error.

W. F. EVANS AND
COWHERD, INGRAHAM & DURHAM,
Attorneys for Plaintiff in Error.

(*Assignment of Errors by St. Louis & San Francisco R. R. Co. Filed in the District Court on August* 28, 1916.)

Comes the Plaintiff in Error above named, by its attorneys undersigned, and in connection with its petition for writ of error, says, that in the record and proceedings of this cause, and during the trial thereof in said District Court, error intervened to its prejudice; and it therefore makes the following assignment of errors, upon which it will rely in the prosecution of a writ of error from the Circuit Court of Appeals for the Eighth Circuit:

I.

The Court erred in overruling the demurrer of the plaintiff in error (defendant below) to the effect that the petition of the plaintiff did not state a cause of action, in that it was not averred in said complaint that claims for damages had been filed, either by Spiller as assignee, or by his assignors, within the two year limitations fixed by the Act to Regulate Commerce.

II.

The Court erred in overruling the demurrer of the plaintiff in error (defendant below) to the effect that there was a misjoinder of

causes of action, as well as a misjoinder of parties defendant, in that in the petition plaintiff in each action was a separate plaintiff as against each of said several defendants.

III.

The Court erred in overruling the demurrer of plaintiff in error (defendant below) in holding that under the Act to Regulate Commerce, an assignee of shippers of live stock is authorized to file claims with the Interstate Commerce Commission for damages to him as assignee, arising out of the payment of freight rates by his assignor.

91

IV.

The Court erred in refusing to hold that an award of damages by the Interstate Commerce Commission to an assignee of shippers is void under the Act to Regulate Commerce.

V.

The Court erred in overruling the objection of the plaintiff in error (defendant below) to the introduction in evidence of the decision and order of the Interstate Commerce Commission, awarding reparation to the plaintiff as assignee and against the defendant, which was received and marked as "Plaintiff's Exhibit 1," said objection of defendant being that it appeared upon the face of said exhibit that the decision and order were made without jurisdiction, and contrary to the two years limitation in the Act to Regulate Commerce, as no shipper had filed a claim for reparation within that time, therefore his right and the right of all shippers was barred; also because the Commission was without jurisdiction and its order simply void because of the fact that the Act does not give the benefit of an award to an assignee, and further, because the order and award granted interest on claims before they were liquidated; and further, that for the court to accept said exhibit as sufficient to make a prima facie case in favor of the plaintiff would be to deprive the carriers of their rights and property without due process of law, in violation of the 14th Amendment of the Constitution.

VI.

The court erred in refusing plaintiff in error's declaration of law in the nature of a demurrer to the evidence, offered at the close of plaintiff's case.

VII.

The Court erred in refusing plaintiff in error's declaration of law in the nature of a demurrer to the evidence, offered at the close of all the evidence.

VIII.

The Court erred in holding that the Interstate Commerce Commission has jurisdiction under the Act to Regulate Commerce of claims against common carriers where it appears that no shipper paying the rates complained of had filed a claim for reparation with the Commission within the two year limitation of the Act, and that therefore no bar of limitations was presented.

92

IX.

The Court erred in overruling and denying each of the declarations of law requested by the defendants, as follows:

1. That the claims for reparation set out in the petitions in this case, are barred by the two-year limitation of the Act to Regulate Commerce, because no claim was filed with the Interstate Commerce Commission by any shipper who paid the freight rate condemned by the Commission, or by any one in his behalf.

2. That neither the plaintiff Spiller nor his alleged assignor Crowley, was authorized by the Act to Regulate Commerce to file claims for reparation with the Interstate Commerce Commission, and therefore the filings made by them were void and of no effect.

3. That the Interstate Commerce Commission was without jurisdiction to entertain the claims filed by the plaintiff Spiller, and by said Crowley, or to make an award of reparation thereon, and therefore the award on which this action is based is unwarranted, contrary to law and void.

4. That the Interstate Commerce Commission did not have before it any legal or competent evidence of an assignment by any shipper to the plaintiff Spiller, or to said Crowley, relating to any of the claims involved herein, and its finding of an assignment thereof was unsupported by competent evidence and was *thereof* void and contrary to law.

5. That the Interstate Commerce Commission had no evidence before it of injury done to the plaintiff Spiller or his alleged assignors by the defendant, or a pecuniary or other damage sustained by said Spiller or said alleged assignors by reason of anything done or omitted to be done in contravention of the Act to Regulate Commerce, and therefore the finding and award made by the Commission to Spiller was contrary to law and void.

6. That there was no evidence before the Interstate Commerce Commission of the payment of freight by any individual, and the finding and award of damages against defendant was therefore unsupported by the evidence and contrary to the Act and void.

7. That the award made by the Interstate Commerce Commis*souri* against the defendant as a delivering carrier in cases where the haul and the revenue derived from the rate condemned by the Com-
93 mission were participated in by other carriers, was contrary to law and void, and would deprive defendants of their property without due process of law.

8. That the holding of the Interstate Commerce Commission at

the hearing that "the payment of an unreasonable charge imports damage—that of itself shows damage" was contrary to law, and its findings that the plaintiff Spiller as assignee was thereby damaged, was a nullity.

9. That the Interstate Commerce Commission erred in not granting the motion of the defendant to dismiss Spiller's petition for reparation, for failure of proof of damage done by defendant to Spiller, in violation of the Act to Regulate Commerce.

10. That the Commission exceeded its statutory power in prescribing in the form of an order of reparation a retroactive rate for a term of more than two years preceding the date of its award and order, and also in prescribing a maximum rate to be charged for a term of two years after said date, for the reason that the Act to Regulate Commerce empowers it to prescribe a rate for the future only.

11. That the award of interest made by the Interstate Commerce Commission against the defendant, and in favor of the plaintiff Spiller, on unliquidated damages for a time prior to the date the damages were definitely ascertained, was contrary to law and void.

12. That the award of any interest by the Interstate Commerce Commission to the plaintiff Spiller was contrary to the Act to Regulate Commerce and void.

13. That the evidence here before the court is insufficient in law to warrant or support a judgment.

14. That upon the entire record and the evidence, and under the law, judgment should be entered herein for the defendant.

15. The Court declares the law to be that in no event can all or any of the plaintiffs herein recover against any or all of the defendants herein, who are used as the final or delivering carrier in any amount or for any sum in excess of the amount, if any, collected and retained by such delivering or final carrier, as its respective part or share due to and existing among said carriers, initial, intermediate or final, in respect to the diversion of freight received on ac-
94 count of the shipments referred to and mentioned in the findings and order of reparation made by the Interstate Commerce Commission.

16. The Court declares the law to be that the finding of the facts and award of reparation herein by the Interstate Commerce Commission is wholly unsupported by any legal or competent evidence, and for the court to accept the same as sufficient to make it a prima facie case in favor of all or any of the plaintiffs herein against all or any of the defendants herein, would be to deprive the said defendants of their rights and property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

X.

The Court erred in holding that the Interstate Commerce Commission had evidence before it to support an award of reparation in favor of Spiller as assignee.

XI.

The Court erred in holding that the Interstate Commerce Commission had power to make and that it properly made an award of reparation where there was no proof of damage sustained to be repaired.

XII.

The court erred in holding that the measure of damage or actionable damages in this case was the difference between the rate condemned by the Interstate Commerce Commission; and the rate held by the Commission to be reasonable, in the absence of evidence of any character showing, or tending to show, that either plaintiff or any of his alleged assignors, had in fact paid the rates condemned, or suffered any pecuniary damage by reason of the payment of said rates.

XIII.

The Court erred in holding that there was competent evidence or sufficient evidence, or any evidence before the Interstate Commerce Commission, upon which it could find there *was* valid assignments of the claims sued on by the plaintiff Spiller.

XIV.

The Court erred in holding that the Interstate Commerce Commission has authority to allow interest on claims arising out of rates paid before such claims for damages have been liquidated.

95 XV.

The Court erred in over-ruling and denying the motion of the defendants for a new trial, and in over-ruling and denying the motion of defendants for arrest of judgment.

XVI.

The court erred in rendering and entering a judgment in this cause against each of the defendants and in favor of the plaintiff.

W. F. EVANS AND
COWHERD, INGRAHAM & DURHAM,
Attorneys for Plaintiff in Error.

August 28th, 1916.

(Bond on Writ of Error Sued Out by the St. Louis & San Francisco R. R. Co. Filed in the District Court on September 8, 1916)

Know All Men By These Presents, That the St. Louis & San Francisco Railroad Company, as principal and United States Fidelity

& Guaranty Company as surety, are held and firmly bound unto E. B. Spiller in the sum of Thirty-five Hundred Dollars ($3500.00) to be paid to the said E. B. Spiller, for the payment of which well and truly to be made we bind ourselves, our successors and assigns firmly by these presents.

Sealed with our seals, this 7th day of September, 1916.

Whereas, the above named, St Louis & San Francisco Railroad Company has sued out a Writ of Error to the United States Circuit Court of Appeals for the Eighth Circuit to reverse a judgment rendered in the above entitled cause by the District Court of the United States, for the Western Division of the Western District of Missouri, on the 16th day of August, 1916.

Now therefore, the condition of this obligation is such that, if the above named St. Louis & San Francisco Railroad Company shall prosecute said writ of error to effect and answer all costs if it fails to make good its appeal, then this obligation shall be void,
96 otherwise to remain in full force and virtue.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY,
By COWHERD, INGRAHAM & DURHAM,
Its Attorneys.
UNITED STATES FIDELITY & GUARANTY COMPANY,
By W. R. TAYLOR, *Attorney in Fact.*

Bond approved and accepted this 11th day of September 1916.
[SEAL.] ARBA S. VAN VALKENBURGH, *Judge.*

(Petition for Writ of Error by Chicago, Rock Island & Pacific Ry. Co. Filed in the District Court on August 28, 1916.

Now comes the Chicago, Rock Island & Pacific Railway Company, one of the defendants herein, and alleges that on the 16th day of August, 1916, this Court entered judgment herein in favor of said plaintiff, and against this defendant, in the sum of Twenty Thousand, Three Hundred and Forty Dollars and Five Cents ($20,340.05), with interest at the rate of six per cent per annum, and all costs of suit, in which judgment and proceedings, certain errors were committed to the prejudice of this defendant, all of which will in detail appear in the assignment of errors which is filed with this petition;

Wherefore, The said Chicago, Rock Island & Pacific Railway Company prays that a writ of error issue for the correction of the errors so complained of; that a transcript of the record, proceedings and pleadings in this case, duly authenticated, be sent to the United States Circuit Court of Appeals for the Eighth Circuit, in order that said judgment so rendered be reversed, and that judgment may be rendered in favor of this defendant and against said plaintiff.

PAUL E. WALKER AND
SEBREE, CONRAD & WENDORFF,
Attorneys for Defendant Chicago, Rock Island & Pacific Railway Company.

97 (*Assignment of Errors by Chicago, Rock Island & Pacific Ry. Co. Filed in the District Court on August* 28, 1916.)

Comes the Chicago, Rock Island & Pacific Railway Company, one of the defendants in this case, by its attorneys undersigned, and, in connection with its petition for writ of error, says that in the record and proceedings of this cause, and during the trial thereof in said District Court, error intervened to its prejudice; and it, therefore, makes the following assignment of errors upon which it will rely in the prosecution of a writ of error from the Circuit Court of Appeals for the Eighth Circuit:

I.

The Court erred in overruling the demurrer of the defendant to the effect that the petition of the plaintiff did not state a cause of action, in that it was not averred in said petition that claims for damages had been filed, either by Spiller, as assignee, or by his assignors, within the two-year limitation fixed by the Act to Regulate Commerce.

II.

The Court erred in overruling the demurrer of the defendant to the effect that there was a misjoinder of causes of action, as well as a misjoinder of parties defendant, in that the petition, plaintiff in each action was a separate plaintiff as against each of said several defendants.

III.

The Court erred in overruling the demurrer of defendant in holding that under the Act to Regulate Commerce an assignee of shippers of live stock is authorized to file claims with the Interstate Commerce Commission for damages to him as assignee, arising out of the payment of freight rates by his assignor.

IV.

The Court erred in refusing to hold that an award of damages by the Interstate Commerce Commission to an assignee of shippers is void under the Act to Regulate Commerce.

V.

The Court erred in overruling the objection of the defendant to the introduction in evidence of the decision and order of the Interstate Commerce Commission awarding reparation to the plaintiff
98 as assignee and against the defendant, which was received and marked as "Plaintiff's Exhibit 1", said objection of defendant being that it appeared upon the face of said exhibit that

the decision and order were made without jurisdiction and contrary to the two years' limitation in the Act to Regulate Commerce, as no shipper had filed a claim for reparation within that time, for which reason his right and the right of all shippers was barred; and also because the Commission was without jurisdiction and its order was void because the Act does not given the benefit of an award to an assignee; and also because the order and award granted interest on claims before they were liquidated; and also because for the court to accept said exhibit as sufficient to make a prima facie case in favor of the plaintiff would be to deprive the carriers of their rights and property without due process of law, in violation of the 14th Amendment of the Constitution.

VI.

The Court erred in refusing defendant's declaration of law in the nature of a demurrer to the evidence at the close of plaintiff's case.

VII.

The Court erred in refusing defendant's declaration of law in the nature of a demurrer to the evidence at the close of all the evidence.

VIII.

The Court erred in holding that the Interstate Commerce Commission has jurisdiction under the Act to Regulate Commerce of claims against common carriers where it appears that no shipper paying the rates complained of had filed a claim for reparation with the Commission within the two-year limitation of the Act, and that, therefore, no bar of limitations was presented.

IX.

The Court erred in overruling and denying each of the declarations of law requested by the defendants, as follows:

1. That the claims for reparation set out in the petitions in this case, are barred by the two-year limitation of the Act to Regulate Commerce, because no claim was filed with the Interstate Commerce Commission by any shipper who paid the freight rate condemned by the Commission, or by any one in his behalf.

99 2. That neither the plaintiff Spiller nor his alleged assignor Crowley, was authorized by the Act to Regulate Commerce to file claims for reparation with the Interstate Commerce Commission, and therefore, the filings made by them were void, and of no effect.

3. That the Interstate Commerce Commission was without jurisdiction to entertain the claims filed by the plaintiff Spiller, and by said Crowley, or to make any award of reparation thereon, and, therefore, the award on which this action is based was unwarranted, contrary to law, and void.

85

4. That the Interstate Commerce Commission did not have before it any legal or competent evidence of an assignment by any shipper to the plaintiff Spiller, or to said Crowley, relating to any of the claims involved herein, and its finding of an assignment thereof was unsupported by competent evidence and was therefore void and contrary to law.

5. That the Interstate Commerce Commission had no evidence before it of injury done to the plaintiff Spiller or his alleged assignors by the defendant, or a pecuniary or other damage sustained by said Spiller or said alleged assignors by reason of anything done or omitted to be done in contravention of the Act to Regulate Commerce, and, therefore, the finding and award made by the Commission to Spiller was contrary to law and void.

6. That there was no evidence before the Interstate Commerce Commission of the payment of freight by any individual, and the finding and award of damages against defendant was, therefore, unsupported by the evidence and contrary to the Act and void.

7. That the award made by the Interstate Commerce Commission against the defendants as a delivering carrier in cases where the haul and the revenue derived from the rate condemned by the Commission were participated in by other carriers, was contrary to law and void, and would deprive defendants of their property without due process of law.

8. That the holding of the Interstate Commerce Commission at the hearing that "the payments of an unreasonable charge imports damage—that of itself shows damage" was contrary to law, and its findings that the plaintiff Spiller as assignee was there damaged, was a nullity.

9. That the Interstate Commerce Commission erred in not granting the motion of the defendant to dismiss Spiller's petition
100 for reparation, for failure of proof of damage done by defendant to Spiller, in violation of the Act to Regulate Commerce.

10. That the Commission exceeded its statutory power in prescribing in the form of an order of reparation a retroactive rate for a term of more than two years preceding the date of its award and order, and also in prescribing a maximum rate to be charged for a term of two years after the said date, for the reason that the Act to Regulate Commerce empowers it to prescribe a rate for the future only.

11. That the award of interest made by the Interstate Commerce Commission against the defendant, and in favor of the plaintiff Spiller, on unliquidated damages for a time prior to the date the damages were definitely ascertained, was contrary to law and void.

12. That the award of any interest by the Interstate Commerce Commission to the plaintiff Spiller was contrary to the Act to Regulate Commerce and void.

13. That the evidence here before the Court is insufficient in law to warrant or support a judgment.

14. That upon the entire record and the evidence, and under the law, judgment should be entered herein for the defendant.

15. The Court declares the law to be that in no event can all or any of the plaintiffs herein recover against any or all of the defendants herein, who are sued as the final or delivering carrier in any amount or for any sum in excess of the amount, if any, collected and retained by such delivering or final carrier, as its respective part or share due to and retained by it under the rules, regulations or agreements existing among said carriers, initial, intermediate or final, in respect to the division of freights received on account of the shipments referred to and mentioned in the findings and order of reparation made by the Interstate Commerce Commission.

16. The Court declares the law to be that the finding of the facts and award of reparation herein by the Interstate Commerce Commission, is wholly unsupported by any legal or competent evidence, and for the court to accept the same as sufficient to make it a prima facie case in favor of all or any of the plaintiffs herein against all or any of the defendants herein, would be to deprive the said defendants of their rights and property without due process of
101 law, in violation of the Fourteenth Amendment of the Constitution of the United States.

X.

The Court erred in holding that the Interstate Commerce Commission had evidence before it to support an award of reparation in favor of Spiller as assignee.

XI.

The Court erred in holding that the Interstate Commerce Commission had power to make and that it properly made an award of reparation where there was no proof of damage sustained to be repaired.

XII.

The Court erred in holding that the measure of damages in this case was the difference between the rate condemned by the Interstate Commerce Commission and the rate held by the Commission to be reasonable, in the absence of evidence of any character showing, or tending to show, that either plaintiff or any of his alleged assignors, had in fact paid the rates condemned or suffered any pecuniary damage by reason of the payment of said rates.

XIII.

The Court erred in holding that there was competent evidence or sufficient evidence, or any evidence before the Interstate Commerce Commission, upon which it could find there were valid assignments of the claims sued on by the plaintiff Spiller.

XIV.

The Court erred in holding that the Interstate Commerce Commission has authority to allow interest on claims arising out of rates paid before such claims for damages have been liquidated.

XV.

The Court erred in rendering and entering a judgment in this cause against each of the defendants and in favor of the plaintiff.

PAUL E. WALKER AND
SEBREE, CONRAD & WENDORFF,
Attorneys for said Defendant Chicago, Rock Island & Pacific Railway Company.

—— ——, 1916.

102 (*Bond on Writ of Error Sued Out by Chicago, Rock Island & Pacific Ry. Co. Filed in the District Court August* 28, 1916.)

Know All Men By These Presents, That we, Chicago, Rock Island & Pacific Railway Company, a corporation organized and existing under the laws of the State of Illinois, and R. M. Cook as surety, are held and firmly bound unto E. B. Spiller, in the sum of Two Thousand, Five Hundred Dollars ($2,500.00) lawful money of the United States of America for the payment of which, well and truly to be made, we bind ourselves, our heirs, legal representatives, successors and assigns, jointly and severally, firmly by these presents.

Whereas, in the above entitled cause said Chicago, Rock Island & Pacific Railway Company has prosecuted its writ of error to the United States Circuit Court of Appeals for the Eighth Circuit, to reverse the judgment rendered in said cause:

Now, Therefore, The condition of this obligation is such, that if the Chicago, Rock Island & Pacific Railway Company shall prosecute its writ of error to effect and answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,
By PAUL E. WALKER, *Its Attorney.*
R. M. COOK, *Surety.*

Approved this 28th day of August, 1916 by
ARBA S. VAN VALKENBURGH,
District Judge.

(*Petition for Writ of Error by the Illinois Central R. R. Co. Filed in the District Court on August* 28, 1916.)

Now comes The Illinois Central Railroad Company, one of the defendants herein, and alleges that on the 16th day of August, 1916, this Court entered judgment herein in favor of said plaintiff, and against this defendant, in the sum of Nineteen hundred sixty seven and 25/100 (1967 25/100) Dollars, with interest at the rate of six per cent per annum and all costs of suit, in which judgment and proceedings, certain errors were committed to the prejudice of this defendant, all of which will in detail appear in the assignment of errors which is filed with this petition;

103 Wherefore, the said The Illinois Central Railroad Company, prays that a writ of error issue for the correction of the errors so complained of; that a transcript of the record, proceedings and pleadings in this case, duly authenticated, be sent to the United States Circuit Court of Appeals for the Eighth Circuit in order that said judgment so rendered be reversed, and that judgment may be rendered in favor of this defendant and against said plaintiff.

R. V. FLETCHER,
THOMAS R. MORROW,
Attorneys for Defendant Illinois Central Railroad Company.

(*Assignment of Errors by the Illinois Central R. R. Co. Filed in the District Court on August* 28, 1916.)

Comes The Illinois Central Railroad Company, one of the defendants in this case, by its attorneys undersigned, and, in connection with its petition for writ of error, says that in the record and proceedings of this cause and during the trial thereof in said District Court, error intervened to its prejudice; and it, therefore, makes the following assignment of errors upon which it will rely in the prosecution of a writ of error from the Circuit Court of Appeals for the Eighth Circuit:

I.

The court erred in overruling the demurrer of the defendant to the effect that the petition of the plaintiff did not state a cause of action, in that it was not averred in said petition that claims for damages had been filed, either by Spiller as assignee or by his assignors, within the two-year limitation fixed by the Act to Regulate Commerce.

II.

The court erred in overruling the demurrer of the defendant to the effect that there was a misjoinder of causes of action, as well as a misjoinder of parties defendant, in that the petition plaintiff in each

action was a separate plaintiff as against each of said several defendants.

III.

The court erred in overruling the demurrer of defendant in holding that under the Act to Regulate Commerce an assignee of shippers of live stock is authorized to file claims with the Interstate Commerce Commission for damages to him as assignee arising out of the payment of freight rates by his assignor.

104

IV.

The court erred in refusing to hold that an award of damages by the Interstate Commerce Commission to an assignee of shippers is void under the Act to Regulate Commerce.

V.

The court erred in overruling the objection of the defendant to the introduction in evidence of the decision and order of the Interstate Commerce Commission awarding reparation to the plaintiff as assignee and against the defendant, which was received and marked as "Plaintiff's Exhibit 1," said objection of defendant being that it appeared upon the [fact] of said exhibit that the decision and order were made without jurisdiction and contrary to the two years' limitation in the Act to Regulate Commerce, as no shipper had filed a claim for reparation within that time, for which reason his right and the right of all shippers was barred; and also because the Commission was without jurisdiction and its order was void because the Act does not give the benefit of an award to an assignee; and also because the order and award granted interest on claims before they were liquidated; and also because for the court to accept said exhibit as sufficient to make a prima facie case in favor of the plaintiff would be to deprive the carriers of their rights and property without due process of law, in violation of the 14th Amendment of the Constitution.

VI.

The court erred in refusing defendant's declaration of law in the nature of a demurrer to the evidence at the close of plaintiff's case.

VII.

The court erred in refusing defendant's declaration of law in the nature of a demurrer to the evidence at the close of all the evidence.

VIII.

The court erred in holding that the Interstate Commerce Commission has jurisdiction under the Act to Regulate Commerce of

claims against common carriers where it appears that no shipper paying the rates complained of had filed a claim for reparation with the Commission within the two-year limitation of the Act, and that, therefore, no bar of limitations was presented.

105 IX.

The court erred in overruling and denying each of the declarations of law requested by the defendants, as follows:

1. That the claims for reparation set out in the petitions in this case, are barred by the two-year limitation of the Act to Regulate Commerce, because no claim was filed with the Interstate Commerce Commission by any shipper who paid the freight rate condemned by the Commission, or by any one in his behalf.

2. That neither the plaintiff Spiller nor his alleged assignor Crowley, was authorized by the Act to Regulate Commerce to file claims for reparation with the Interstate Commerce Commission, and, therefore, the filings made by them were void and of no effect.

3. That the Interstate Commerce Commission was without jurisdiction to entertain the claims filed by the plaintiff Spiller, and by said Crowley, or to make an award of reparation thereon, and, therefore, the award on which this action is based was unwarranted, contrary to law and void.

4. That the Interstate Commerce Commission did not have before it any legal or competent evidence of an assignment by any shipper to the plaintiff Spiller, or to said Crowley, relating to any of the claims involved herein and its finding of an assignment thereof was unsupported by competent evidence and was therefore void and contrary to law.

5. That the Interstate Commerce Commission had no evidence before it of injury done to the plaintiff Spiller or his alleged assignors by the defendant, or a pecuniary or other damage sustained by said Spiller or said alleged assignors by reason of anything done or omitted to be done in contravention of the Act to Regulate Commerce, and, therefore, the finding and award made by the Commission to Spiller was contrary to law and void.

6. That there was no evidence before the Interstate Commerce Commission of the payment of freight by any individual, and the finding and award of damages against defendant was, therefore, unsupported by the evidence and contrary to the Act and void.

7. That the award made by the Interstate Commerce Commission against the defendant as a delivering carrier in cases where
106 the haul and the revenue derived from the rate condemned by the Commission were participated in by other carriers, was contrary to law and void, and would deprive defendants of their property without due process of law.

8. That the holding of the Interstate Commerce Commission at the hearing that "the payments of an unreasonable charge imports damage—that of itself shows damage" was contrary to law, and its findings that the plaintiff Spiller was assignee was thereby damaged, was a nullity.

9. That the Interstate Commerce Commission erred in not granting the motion of the defendant to dismiss Spiller's petition for reparation, for failure of proof of damage done by defendant to Spiller, in violation of the Act to Regulate Commerce.

10. That the Commission exceeded its statutory power in prescribing in the form of an order of reparation a retroactive rate for a term of more than two years preceding the date of its award and order, and also in prescribing a maximum rate to be charged for a term of two years after said date, for the reason that the Act to Regulate Commerce empowers it to prescribe a rate for the future only.

11. That the award of interest made by the Interstate Commerce Commission against the defendant, and in favor of the plaintiff Spiller, on unliquidated damages for a time prior to the date the damages were definitely ascertained, was contrary to law and void.

12. That the award of any interest by the Interstate Commerce Commission to the plaintiff Spiller was contrary to the Act to Regulate Commerce and void.

13. That the evidence here before the Court is insufficient in law to warrant or support a judgment.

14. That upon the entire record and the evidence, and under the law, judgment should be entered herein for the defendant.

15. The court declares the law to be that in no event can all or any of the plaintiffs herein recover against any or all of the defendants herein, who are sued as the final or delivering carrier in any amount or for any sum in excess of the amount, if any, collected and retained by such delivering or final carrier, as its respective part or share due to and retained by it under the rules, regulations or agree-
107 ments existing among said carriers, initial, intermediate or final, in respect to the division of freights received on account of the shipments referred to and mentioned in the findings and order of reparation made by the Interstate Commerce Commission.

16. The Court declares the law to be that the finding of the facts and award of reparation herein by the Interstate Commerce Commission, is wholly unsupported by any legal or competent evidence, and for the court to accept the same as sufficient to make it a prima facie case in favor of all or any of the plaintiffs herein against all or any of the defendants herein, would be to deprive the said defendants of their rights and property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

X.

The court erred in holding that the Interstate Commerce Commission had evidence before it to support an award of reparation in favor of Spiller as assignee.

XI.

The court erred in holding that the Interstate Commerce Commission had power to make and that it properly made an award of reparation where there was no proof of damage sustained to be repaired.

XII.

The court erred in holding that the measure of damages in this case was the difference between the rate condemned by the Interstate Commerce Commission and the rate held by the Commission to be reasonable, in the absence of evidence of any character showing, or tending to show, that either plaintiff or any of his alleged assignors, had in fact paid the rates condemned or suffered any pecuniary damage by reason of the payment of said rates.

XIII.

The court erred in holding that there was competent evidence or sufficient evidence, or any evidence before the Interstate Commerce Commission, upon which it could find there were valid assignments of the claims sued on by the plaintiff Spiller.

XIV.

The court erred in holding that the Interstate Commerce Commission has authority to allow interest on claims arising out of
108 rates paid before such claims for damages have been liquidated.

XV.

The court erred in rendering and entering a judgment in this cause against each of the defendants and in favor of the plaintiff.

R. V. FLETCHER,
THOMAS R. MORROW,
Attorneys for said Defendant.

August 28th, 1916.

(*Bond on Writ of Error Sued Out by the Illinois Central R. R. Co. Filed in the District Court on August* 28, 1916.)

Know All Men By These Presents, that we, Illinois Central Railroad Company, a corporation organized and existing under the laws of the State of Illinois, and United States Fidelity & Guaranty Company as surety, are held and firmly bound unto E. B. Spiller, in the sum of Two Thousand Dollars ($2,000), lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves, our heirs, successors and assigns, jointly and severally, firmly by these presents.

Whereas, in the above entitled cause said Illinois Central Railroad Company has prosecuted its writ of error to the United States Circuit Court of Appeals for the Eighth Circuit, to reverse the judgment rendered in said cause,

Now, Therefore, the condition of this obligation is such that if the Illinois Central Railroad Company shall prosecute its writ of error

to effect and answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

ILLINOIS CENTRAL RAILROAD COMPANY,
By R. V. FLETCHER,
Its General Attorney.

109 [SEAL.] UNITED STATES FIDELITY & GUARANTY COMPANY, *Surety.*

Approved this 28th day of August, 1916, by
ARBA S. VAN VALKENBURGH,
District Judge.

(*Petition for Writ of Error by the Missouri, Kansas & Texas Ry. Co. Filed in the District Court on August* 28, 1916.)

Now comes the Missouri, Kansas & Texas Railway Company, plaintiff in error, and alleges and shows to the Court that on the 16th day of August, 1916, this Court entered judgment herein in favor of said defendant in error, and against said plaintiff in error, in the sum of Sixty One Thousand Seven Hundred Sixty Four and 34/100 Dollars ($61,764.34), together with interest thereon at the rate of six per cent, an attorney's fee of Six Thousand One Hundred Seventy Six and 43/100 Dollars ($6,176.43), and all other costs of suit, in which decision, judgment, and proceedings, certain errors were committed to the prejudice of plaintiff in error, all of which will more in detail appear in the assignment of errors which is filed with this petition;

Wherefore, the said Missouri, Kansas, & Texas Railway Company, plaintiff in error, prays that a writ of error may issue for the correction of the errors so complained of; that a transcript of the record, proceedings and pleadings in this case, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit; that said judgment so rendered be reversed, vacated, set aside and held for naught, and that judgment may be rendered in favor of plaintiff in error and against defendant in error.

J. W. JAMISON,
C. S. BURG,
Attorneys for Plaintiff in Error.

(*Assignment of Errors by the Missouri, Kansas & Texas Ry. Co. Filed in the District Court on August* 28, 1916.)

Comes the plaintiff in error above-named, by its attorneys undersigned, and in connection with its petition for writ of error, says, that in the record and proceedings of this cause, and during the trial thereof in said District Court error intervened to its prejudice;
110 and it therefore makes the following assignment of errors,

upon which it will rely in the prosecution of a writ of error from the Circuit Court of Appeals for the Eighth Circuit:

I.

The Court erred in overruling the demurrer of the plaintiff in error (defendant below), to the effect that the petition of the plaintiff did not state a cause of action, in that it was not averred in said complaint that claims for damages had been filed, either by Spiller as assignee, or by his assignors, within the two year limitations fixed by the Act to Regulate Commerce.

II.

The Court erred in overruling the demurrer of the plaintiff in error (defendant below), to the effect that there was a misjoinder of causes of action, as well as a misjoinder of parties defendant, in that in the petition plaintiff in each action was a separate plaintiff as against each of said several defendants, there being several and as many separate causes of action attempted to be stated in the petition as there are defendants.

III.

The Court erred in overruling the demurrer of plaintiff in error (defendant below) in holding that under the Act to Regulate Commerce, an assignee of shippers of live stock is authorized to file claims with the Interstate Commerce Commission for damages to him as assignee, arising out of the payment of freight rates by his assignor.

IV.

The Court erred in refusing to hold that an award of damages by the Interstate Commerce Commission to an assignee of shippers is void under the Act to Regulate Commerce.

V.

The Court erred in overruling the objection of the plaintiff in error (defendant below) to the introduction in evidence of the decision and order of the Interstate Commerce Commission, awarding reparation to the plaintiff as assignee and against the defendant, which was received and marked as "Plaintiff's Exhibit 1", said objection of defendant being that it appeared upon the face of said exhibit that the decision and order were made without jurisdiction, and contrary to the two years' limitation in the Act to Regulate Commerce, as no shipper had filed a claim for reparation within
111 that time, therefore his right and the right of all shippers was barred; also because the Commission was without jurisdiction and its order simply void because of the fact that the Act does not give the benefit of an award to an assignee, and further, because

the order and award granted interest on claims before they were liquidated; and further, that for the court to accept said exhibit as sufficient to make a prima facie case in favor of the plaintiff would be to deprive the carriers of their rights and property without due process of law, in violation of the 14th Amendment to the Constitution.

VI.

The court erred in refusing plaintiff in error's declaration of law in the nature of a demurrer to the evidence, offered at the close of plaintiff's case.

VII.

The court erred in refusing plaintiff in error's declaration of law in the nature of a demurrer to the evidence, offered at the close of all the evidence.

VIII.

The Court erred in holding that the Interstate Commerce Commission has jurisdiction under the Act to Regulate Commerce of claims against common carriers where it appears that no shipper paying the rates complained of had filed a claim for reparation with the Commission within the two-year limitation of the Act.

IX.

The Court erred in overruling and denying each of the declarations of law requested by the defendants, as follows:

1. That the claims for reparation set out in the petitions in this case, are barred by the two-year limitation of the Act to Regulate Commerce, because no claim was filed with the Interstate Commerce Commission by any shipper who paid the freight rate condemned by the Commission, or by any one in his behalf.

2. That neither the plaintiff Spiller nor his alleged assignor Crowley, was authorized by the Act to Regulate Commerce to file claims for reparation with the Interstate Commerce Commission, and therefore the filings made by them were void and of no effect.

112 3. That the Interstate Commerce Commission was without jurisdiction to entertain the claims filed by the plaintiff Spiller, and by said Crowley, or to make an award of reparation thereon, and therefore the award on which this action is based was unwarranted, contrary to law and void.

4. That the Interstate Commerce Commission did not have before it any legal or competent evidence of an assignment by any shipper to the plaintiff Spiller, or to said Crowley, relating to any of the claims involved herein, and its finding of an assignment thereof was unsupported by competent evidence and was therefore void and contrary to law.

5. That the Interstate Commerce Commission had no evidence before it of injury done to the plaintiff Spiller or his alleged assignors by the defendant, or a pecuniary or other damage sustained by said

Spiller or said alleged assignors by reason of anything done or omitted to be done in contravention of the Act to Regulate Commerce, and therefore the finding and award made by the Commission to Spiller was contrary to law and void.

6. That there was no evidence before the Interstate Commerce Commission of the payment of freight by any individual, and the finding and award of damages against defendant was therefore unsupported by the evidence and contrary to the Act and void.

7. That the award made by the Interstate Commerce Commission against the defendant as a delivering carrier in cases where the haul and the revenue derived from the rate condemned by the Commission were participated in by other carriers, was contrary to law and void, and would deprive defendants of their property without due process of law.

8. That the holding of the Interstate Commerce Commission at the hearing that "the payment of an unreasonable charge imports damage—that of itself shows damage" was contrary to law, and its findings that the plaintiff Spiller as assignee was thereby damaged, was a nullity.

9. That the Interstate Commerce Commission erred in not granting the motion of the defendant to dismiss Spiller's petition for reparation, for failure of proof of damage done by defendant to Spiller, in violation of the Act to Regulate Commerce.

10. That the Commission exceeded its statutory power in prescribing in the form of an order of reparation a retroactive rate for a term of more than two years preceding the date of its award
113 and order, and also in prescribing a maximum rate to be charged for a term of two years after said date, for the reason that the Act to Regulate Commerce empowers it to prescribe a rate for the future only.

11. That the award of interest made by the Interstate Commerce Commission against the defendant, and in favor of the plaintiff Spiller, on unliquidated damages for a time prior to the date the damages were definitely ascertained, was contrary to law and void.

12. That the award of any interest by the Interstate Commerce Commission to the plaintiff Spiller was contrary to the Act to Regulate Commerce and void.

13. That the evidence here before the court is insufficient in law to warrant or support a judgment.

14. That upon the entire record and the evidence, and under the law, judgment should be entered herein for the defendant.

15. The court declared the law to be that in no event can all or any of the plaintiffs herein recover against any or all of the defendants herein, who are sued as the final or delivering carrier in any amount, or for any sum in excess of the amount, if any, collected and retained by such delivering or final carrier, as its respective part or share due to and retained by it under the rules, regulations or agreements existing among said carriers, initial, intermediate or final, in respect to the division of freights received on account of the shipments referred to and mentioned in the findings and order of reparation made by the Interstate Commerce Commission.

16. The court declares the law to be that the finding of the facts and award of reparation herein by the Interstate Commerce Commission, is wholly unsupported by any legal or competent evidence, and for the court to accept the same as sufficient to make it a prima facie case in favor of all or any of the plaintiffs herein against all or any of the defendants herein, would be to deprive the said defendants of their rights and property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

114

X.

The Court erred in holding that the Interstate Commerce Commission had evidence before it to support an award of reparation in favor of Spiller as assignee.

XI.

The Court erred in holding that the Interstate Commerce Commission had power to make and that it properly made an award of reparation where there was no proof of damage sustained to be repaired.

XII.

The Court erred in holding that the measure of damages or actionable damages in this case was the difference between the rate condemned by the Interstate Commerce Commission, and the rate held by the Commission to be reasonable, in the absence of evidence of any character showing, or tending to show, that either plaintiff or any of his alleged assignors, had in fact paid the rates condemned, or suffered any pecuniary damage by reason of the payment of said rates.

XIII.

The Court erred in holding that there was competent evidence or sufficient evidence, or any evidence before the Interstate Commerce Commission, upon which it could find there *was* valid assignments of the claims sued on by the plaintiff Spiller.

XIV.

The Court erred in holding that the Interstate Commerce Commission has authority to allow interest on claims arising out of rates paid before such claims for damages have been liquidated.

XV.

The Court erred in overruling and denying the motion of the defendants for a new trial, and in overruling and denying the motion of the defendants for arrest of judgment.

115 XVI.

The Court erred in rendering and entering a judgment in this cause against each of the defendants and in favor of the plaintiff.

J. W. JAMISON,
C. S. BURG,
Attorneys for Plaintiff in Error.

August 28, 1916.

(*Bond on Writ of Error Sued Out by the Missouri, Kansas & Texas Ry. Co. Filed in the District Court on September* 2, 1916.)

Know All Men By These Presents, that we, Missouri, Kansas & Texas Railway Company, a corporation organized and existing under the laws of Kansas, with principal office in the City of Parsons, Kansas, as principal, and Fidelity & Deposit Company of Maryland, a corporation organized and existing under the laws of the State of Maryland, as surety, are held and firmly bound unto E. B. Spiller in the sum of Seven Thousand Dollars, ($7,000.00) lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves, our heirs, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this the First day of September, in the year of our Lord One Thousand Nine Hundred and Sixteen.

Whereas, in the above entitled cause said Missouri, Kansas & Texas Railway Company, plaintiff in error, has *constituted* its writ of error to the United States Circuit Court of Appeals for the Eighth Circuit to reverse the judgment rendered in the above entitled cause by the Judge of the District Court of the Western Division of the Western District of Missouri, in favor of defendant in error and against plaintiff in error;

116 Now, Therefore, the condition of this obligation is such that if the above named Missouri, Kansas & Texas Railway Company, plaintiff in error, shall prosecute its writ of error to effect, and answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

[SEAL.] MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,
By C. V. WHITEHEAD,
Its Vice-President.

Attest:
D. L. MURPHY,
Asst. Secretary.

[SEAL.] FIDELITY & DEPOSIT COMPANY OF MARYLAND,
By CECIL D. GREGG,
Resident Vice-President.

Attest:
MARK CRAWLEY,
Resident Asst. Secretary.

Approved this 2nd day of September, 1916 by:
ARBA S. VAN VALKENBURGH,
District Judge.

Vol. 1, Filed Oct. 26, 1916. John D. Jordan, Clerk.

117 (*Bill of Exceptions. Filed in the District Court on Sept 2, 1916.*)

In the District Court of the United States for the Western Division of the Western District of Missouri, at Kansas City, April Term, 1915.

No. 4308.

E. B. SPILLER, Plaintiff,

vs.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY et al., Defendant-.

No. 4320.

E. B. SPILLER et al., Plaintiffs,

vs.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY et al., Defendants.

Be it Remembered that at ten o'clock A. M., on Wednesday, the 8th day of December, A. D. 1916, agreement between counsel for all parties, the above-entitled causes, No. 4308, E. B. Spiller, Plaintiff, versus Missouri, Kansas and Texas Railway Company, et al., Defendants, and No. 4320, E. B. Spiller, et al., Plaintiffs, versus Missouri, Kansas and Texas Railway Company, et al., Defendants, came on for hearing and trial, before the Honorable Arba S. Van Valkenburgh, Judge of said District Court of the United States, for the Western Division, of the Western District of Missouri, at Kansas City.

Appearances:

S. H. Cowan, of Fort Worth, Texas, and Deatherage & Creason, of Kansas City, Missouri, appearing for Plaintiffs.

T. J. Morton, of Chicago, Illinois, and Thomas R. Morrow, of Kansas City, Missouri, appearing for Defendant, The Atchison, Topeka and Santa Fe Railway Company.

J. W. Jamison, St. Louis, Missouri, and C. S. Burg, St. Louis, Missouri, appearing for Defendant, Missouri, Kansas & Texas Railway Company.

Frank P. Sebree, Kansas City, Missouri, appearing for Defendant, Chicago, Rock Island & Pacific Railway Company.

Arthur H. Morse, and L. E. Durham, Kansas City, Missouri, appearing for Defendants, St. Louis and San Francisco Railroad Company, and Chicago, and Eastern Illinois Railway Company.

118 Thomas Hackney, and Martin Lyons, Kansas City, Missouri, appearing for Defendants, Missouri Pacific Railway Company, and St. Louis, Iron Mountain and Southern Railway Company.

Charles M. Miller, Kansas City, Missouri, appearing for Defendant, Chicago & Alton Railway Company.

Thomas R. Morrow, and R. V. Fletcher, appearing for Defendant, Illinois Central Railroad Company.

Thereupon the following proceedings were had, to-wit:

Mr. Creason: If your honor please, the answers refiled contain an answer to the second count. I presume that part that applies to the second count is out of the case.

The Court: Oh, yes, I presume so.

Mr. Deatherage: There is a matter that I want to take up before we go on with the trial—I am waiting for Mr. Morse to come—and that is with regard to the Chicago & Eastern Illinois Railway.

The Court: Very well.

Mr. Morse (who enters court room at this time): I am ready to file answers for the Chicago & Eastern Illinois, and would like for the record to show the demurrers for the Chicago & Eastern Illinois as overruled.

The Court: Yes.

Mr. Cowan: I suggest that we might go on and be introducing our testimony while I am signing up these papers, and consider them as filed. They are general denials.

The Court: If they are general denials, they may be understood *and* filed.

Mr. Morrow: The first thing is to file this stipulation.

Said stipulation was then filed with the Clerk, and is in words and figures as follows, to-wit:

In the District Court of the United States for the Western Division of the Western District of Missouri, at Kansas City, November Term, 1915.

No. 4317.

E. B. SPILLER, Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTE FE RAILWAY COMPANY, Defendant.

119 *Stipulation Waiving Jury.*

It is hereby stipulated and agreed by the parties hereto and the parties to cases with the following numbers and titles:

#4308, E. B. Spiller vs. Missouri, Kansas & Texas Railway Company et al.,
4310, E. B. Spiller vs. Missouri Pacific Railway Company,
4311, E. B. Spiller vs. Illinois Central Railroad Company,
4312, E. B. Spiller vs. St. Louis, Iron Mountain & Southern Railway Company,
4313, E. B. Spiller vs. St. Louis & San Francisco Railroad Company,
4315, E. B. Spiller vs. Chicago, Rock Island & Pacific Railway Company,
4318, E. B. Spiller vs. Missouri, Kansas & Texas Railway Company,
4319, E. B. Spiller vs. Chicago & Alton Railroad Company,
4320, E. B. Spiller et al. vs. Missouri, Kansas & Texas Railway Company et al.,

that this case and each of said cases may be tried by the Court without a jury, a jury being hereby waived, and that the right is reserved to the parties hereto to prosecute a writ of error to the Court or Courts of appellate jurisdiction, and thereby to review all questions of law arising on the trial, and also the record in this case, as fully as might be done if the jury were not waived. It being agreed that causes 4308 and 4320 are the cases to be now tried and that the other causes are to be continued.

S. H. COWAN,
I. F. BURNEY,
B. F. DEATHERAGE,
GOODWIN CREASON,
Attorneys for Plaintiff.

J. W. Jamison,
C. S. Burg,
F. P. Sebree.

THOMAS R. MORROW,
ROBERT DUNLAP,
T. J. NORTON,
Attorneys for Defendants.

Mr. Sebree: If your honor please, the answers of the Chicago, Rock Island and Pacific have not been filed yet, but I would like to have the record show them as filed.

120 Mr. Norton: In view of the particularity about these papers that are filed, I wish to ask if my answer in No. 4317 might be taken as filed in the other two suits in which the Atchison, Topeka and Sante Fe is interested? I do not want to file additional answers.

The Court: It is frequently made of record that a reply, or an answer, or something of that sort, is adopted as filed in another case, and I understood that counsel conceded that, and do not require that you file a separate paper in each case.

Mr. Deatherage: Not at all; it was understood when we started out on the trial here that the exhibit to the petitions should be a part of the petitions, the same as if it was set out in full. I want the record to show that.

The Court: Yes. That is necessary from the standpoint of the demurrers.

Mr. Cowan: Now, if your honor please, we offer in evidence, first, the order of the Commission which is attached to the petition, directing the payment of money under Section 16. I presume your honor does not care to hear that read.

The Court: I do not see why, gentlemen, that I should hear anything read to-day, because it is understood that all these matters introduced by both plaintiff and defendant-, are to be analyzed in briefs by both sides and points made with respect to such items as are desired to call to the court's attention.

Mr. Cowan: I suppose your honor desires that we submit a brief.

The Court: Yes.

Mr. Norton: Before we pass to another offer, Mr. Cowan, I would like to interpose objections to the decision and order of the Commission awarding the reparation on which this action and these actions were based, because the report and order were made without jurisdiction and contrary to the two-year statute of limitations in the Act, for no shipper filed a claim for reparation within that time; therefore, his right and the right of all shippers is barred. I object also because the Commission was without jurisdiction and its order was therefore null and void, because of the fact that the Act does not give the benefit of an award to the assignee. I object because the evidence before the Interstate Commerce Commission was incompetent and because it does not support the decision, order and award.

We object because the order and award grant interest on
121 claims before they were liquidated, and generally, because the order and award are incompetent, immaterial and irrelevant.

The Court: I suppose these objections are made as to all of the defendants?

Mr. Morrow: I was going to say I think it ought to be understood that way.

The Court: I think it ought to be understood in this trial that all these matters are being tried together and the objections are being made for the benefit of all the defendants.

Mr. Morrow: And in each case.

The Court: And in each case.

Mr. Cowan: That was the understanding and we agreed to it.

Mr. Jamison: It appears on the *fact* of the alleged finding and award of the Commission, that it states merely conclusions and inferences and is not a finding of facts, and for this court to give it the effect of making a prima facie case in favor of the plaintiff in this case would be to deprive the carriers of their rights without due process of law, and deprive the carriers of their property without due process of law, in violation of the 14th amendment to the Constitution.

The Court: The report and finding as tendered will be received subject to the objections, and the ruling will be reserved.

Mr. Norton: And in case the ruling should be against our objections, the record will show our exceptions?

The Court: Let the record show that exceptions are preserved.

Said document offered in evidence by plaintiff, having been duly marked by the reporter as "Plaintiff's Exhibit 1, GWS, 12/8/15," is filed herewith and made a part of this record, with the same force and effect as if set out at length herein.

122 PLTFF.'s EXHIBIT 1. 12/8/15. G. W. S.

Unreported Opinion No. A-583.

Interstate Commerce Commission.

No. 732.

CATTLE RAISERS' ASSOCIATION OF TEXAS

vs.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY et al.

Decided January 12, 1914.

Supplemental Report of the Commission.

PROUTY, *Commissioner:*

The Commission, in its former report in this case, 13 I. C. C., 418, 435, stated that reparation would be awarded from August 29, 1906. Claims for reparation were filed with the Commission covering shipments both before and after this date, but no claims are embraced in this report where delivery was made previous to the date above given.

These claims, as filed with the Commission, describe in detail the shipments on account of which reparation is claimed, stating the point of origin and the point of delivery and the carrier making the delivery. By the direction of the Commission, a list of the cars with respect to which claims have been filed was furnished to each one of these delivering lines, which was requested by the Commission to check the claims against their records with a view to ascertaining how many of the cars moved as appeared from the records of the defendants. These claims have been checked by these delivering roads, and no carloads are embraced in this report which did not appear from the records of the defendants to have moved as stated.

In all cases in this report the point of origin, the point of delivery, and the delivering road are named. The complainant has no way of determining the originating carrier, where the point of origin is served by two or more carriers, nor the intermediate carrier, where such a carrier participated in the transportation.

These shipments of live stock were in all cases consigned
123 to some person at the delivering market, usually a commission firm. The consignor paid the freight in the first instance to the delivering carrier in all cases. Subsequently the cattle were sold upon the market and the amount of the freight deducted from the purchase price, remittance being made for the balance In all cases, therefore, the owner and shipper of the cattle finally paid the transportation charges.

The table attached to and made a part of this report, as Appendix A, shows with reference to all shipments whose movement was admitted by the defendants the point of origin, the point and road of delivery, the rate of freight which was paid, the rate which should have been paid, and the difference between the amount of freight which was paid and the amount which should have been paid. In some cases the weight of the shipment did not appear, and in all such instances the minimum carload has been applied, since under their tariffs, the carriers must have collected at least upon the minimum.

Referring to Appendix "A," we find that the persons named in the column marked "consignor" shipped from the points named in the column marked "origin" to the points named in the column marked "destination," by the line of road named as the "delivering road," the number of cars specified in the column headed "number of cars," of the aggregate net weight stated in the column marked "weight." We further find that said shippers paid to said delivering carriers freight upon these shipments at the rate which is named in the column headed "rate paid." We find that this rate was unreasonable and excessive and that a reasonable rate to have been charged on the several shipments at the time they were made would have been that rate named in the column marked "rate ordered," which was subsequently established by the Commission, and that therefore the said delivering carriers collected from the said shippers unreasonable charges on account of the shipments by the amounts named in the column headed "amount of refund." We further find that by these

unreasonable exactions of the said carriers the said shippers were damaged in the amounts stated in said last-named column, since they received for their cattle less by those amounts than they would have received had the rate found reasonable been charged, and that said shippers are entitled to reparation in the amounts so specified, with interest from the date of *of* the delivery of the shipment at 6 per cent, which said interest has been computed and is stated in
124 the column marked "interest."

In case of certain of the above claims the shipper made an assignment to H. E. Crowley, at that time secretary of the Cattle Raisers' Association. The form of this assignment was the same in all cases, and was as follows:

In consideration of One Dollar to me in hand paid by H. E. Crowley, Secretary, as well as other considerations good and valuable to me, I hereby transfer and assign to him absolutely, any and all right of action, claims, or demands which I now have, or may hereafter have, against each and every Railway Company over whose railroad I have shipped any cattle, for reparation or reimbursements on account of any excessive, unreasonable, discriminatory, or otherwise unlawful or unjust freight rates or other charges which I have paid to such railway company on such shipments, as schedule of said shipments hereto attached.

Having assigned my said claim as aforesaid, I also delegate to said H. E. Crowley, Secretary, full authority in establishing said claim to collect data and evidence in relation thereto from all Commission Companies, persons or firms as if I were personally present and acting in the premises.

Witness my signature hereto.

____. ____ ____.

Post-office address. Sign here.

We find that this assignment was made by the shipper in all cases where, in Appendix "A," the name of such shipper is followed by the letter "C." Subsequently Crowley ceased to be secretary of the Cattle Raisers' Association and was succeeded by E. B. Spiller, and thereafter the shippers assigned certain other claims to Spiller, The form of assignment used was in all cases the same as that which had formerly been employed in making the assignment to Crowley. We find that those shippers whose names are followed by the letter "S" made assignments in this manner to Spiller.

After Crowley ceased to be secretary of the Cattle Raiser's Association he assigned all claims which had previously been assigned to him to his successor, Spiller, by assignment in due form, so that Spiller now has whatever right and title Crowley originally took under the assignments to him.

The attorney for the complainant contended that all claims assigned to Spiller directly, or to Crowley and by him to Spiller as

above, were so vested in Spiller that he was entitled to de-
125 mand and receive payment of the amount of reparation due from the defendants, and that the order of reparation should be made in his favor. Upon the request of the attorney of the complainants the Commission orders payment of reparation to E. B. Spiller in all cases where such assignments were made as indicated in the appendix aforesaid. Where no assignment has been made the order will run directly in favor of the owner as shown by said appendix.

All the claims mentioned in the above appendix, with respect to which reparation is allowed, were filed with the Commission within less than two years from the date when the shipment was delivered to the consignee by the delivering road.

An order will be entered accordingly.

CLAIMS AGAINST ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,
THE DELIVERING LINE IN EACH SHIPMENT.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate Paid	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Aaron & Hughes. (S)	Giles, Tex	Kansas City, Kans	2	44,000	34½	31½	$13 20	$5 42
Abney, J. A	Higgins, Tex	do	3	68,800	29½	26½	20 64	6 51
Adair, Mrs. C. (S)	Southard, Tex	do	42	957,100	34½	31½	287 13	
Do	Goodnight, Tex	do	7	158,980	34½	31½	47 67	
Do	Southard, B/A Goodnight	do	45	1,022,500	34½	31½	306 75	
Do	Clarendon, Tex	do	6	132,600	34½	31½	39 78	
Do	Clarendon, B/A Southard	do	3	70,200	34½	31½	21 06	
Do	Southard, Tex	St. Joseph, Mo	18	405,900	34½	31½	121 77	
Do	Southard, B/A Goodnight	do	16	361,900	34½	31½	108 57	
Do	Clarendon, B/A Goodnight	do	14	320,400	34½	31½	96 12	
			151	3,429,500			1,028 85	198 67
Akers, C. E	Shattuck, Okla	Kansas City, Kans	4	134,200	29½	26½	40 26	6 52
Allison, M. G. (S)	Noble, Okla	do	1	24,000	32	29	7 20	
Do	Norman, Okla	do	2	43,700	31½	28½	13 11	
			3	67,700			20 31	8 31
Arnold & Higgins. (S)	Hereford, Tex	do	3	65,700	34½	31½	19 71	6 26
Arnett, A. M	do	do	8	177,100	34½	31½	53 13	20 49
Badgley & Massie	Claude, Tex	do	3	64,700	34½	31½	19 41	6 10
Badgley & Taylor	do	do	5	113,000	34½	31½	33 90	9 05
Bagwell, J. T	do	do	3	66,000	34½	31½	19 80	7 24
Baker, E. N	Amarillo, Tex	do	8	174,200	34½	31½	52 26	22 46

Baker, F. M. (S)	....do	....do	9	201,600	34½	31½	60.48	
Do	Hereford, Tex	....do	2	45,100			13.53	
			11	246,700			74.01	31.64
Ball, R. L.	....do	....do	3	67,800	34½	31½	20.34	8.82
Barton, Richard	Higgins, Tex	....do	5	116,600	29½	26½	34.98	11.05
Batson Bros. (S)	Amarillo, Tex	....do	3	70,400	34½	31½	21.12	8.01
Beattie&Witherspoon.(S)	Texico, N. Mex	....do	4	94,600	38	35	28.38	12.38
Beavers & Moore	Berwyn, Okla	South St. Joseph, Mo	3	67,500	34½	30½	25.31	
Do	....do	Kansas City, Kans	3	74,300	34½	30½	27.86	
169			6	141,800			53.17	17.38
Behler, F. S. (S)	Woodward, Okla	....do	4	44,000	29½	26½	13.20	5.56
Bell, J. E. (S)	Purcell, Okla	....do	6	136,900	32½	29	47.91	19.80
Beverly & Harding. (S)	Bovina, Tex	South St. Joseph, Mo	7	154,100	34½	31½	46.23	
Do	....do	Kansas City, Kans	6	139,300	34½	31½	41.79	
Do	Amarillo, Tex	South St. Joseph, Mo	2	44,300	34½	31½	13.29	
Do	....do	Kansas City, Kans	4	91,200	34½	31½	27.36	
Do	Tascosa, Tex	....do	3	66,400	34½	31½	19.92	
Do	Channing, Tex	....do	2	44,000	34½	31½	13.20	
			24	539,300			161.79	60.63
Beverly, L. C. (C)	Clarendon, Tex	South St. Joseph, Mo	2	46,000	34½	31½	13.80	6.09
Biggs, A. R. (S)	Hereford, Tex	Kansas City, Kans	4	88,000	34½	31½	26.40	11.13
Bivins, Lee. (S)	Amarillo, Tex	....do	20	452,500	34½	31½	135.75	56.16
Bomar Cotton Oil Co. (S)	Gainesville, Tex	....do	46	1,076,220	36½	33½	322.86	133.06
Bond, J. S. (S)	Purcell, Okla	....do	2	43,700	32½	29	15.30	6.44
Bonner, A. T. (S)	Memphis, Tex	....do	2	49,600	34½	31½	14.88	5.44
Bonner & Huff. (S)	Canadian, Tex	....do	6	139,100	31	28	41.73	13.88
Boone, Hugh. (S)	Purcell, Okla	....do	7	165,800	32½	29	58.03	22.92

[1] The term "Do", used in connection with the name of consignor, means a repetition of the line, including the initial letter indicating to whom the assignment was made, and when used elsewhere also means a repetition of the preceding line.

CLAIMS AGAINST ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,
THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Bottoms & Camp (S)	Paoli, Okla	Kansas City, Kans	2	47,500	33½	30½	$ 14.25	$14 25
Bottoms, Z. T. (S)	Paoli, Okla	do	9	202,000	33½	30½	60.60	23 14
Bourland, F. L. (S)	Memphis, Tex	do	2	44,000	34½	31½	13.20	4 85
Bourland, W. M. & Bro. (S)	Giles, Tex	do	5	113,300	34½	31½	33.99	10 82
Bowers, J. H. (S)	Hereford, Tex	do	5	105,500	34½	31½	31.65	11 37
Boyd, O. F. & H. T. (S)	Bovina, Tex	do	2	40,500	34½	31½	14.85	4 90
Boykin, S. J. (S)	do	do	2	48,100	34½	31½	14.43	4 47
Bradley, L. R. (S)	Hereford, Tex	do	5	110,300	34½	31½	33.09	14 13
Breen Bros. & Graham	Cannon City, Tex	South St. Joseph, Mo	5	95,200	34½	31½	28.56	12.52
Byron Brier (S)	Krum, Tex	Kansas City, Kans	3	69,200	36½	33½	20.76	6 90
Brooks, E. (S)	Canyon City, Tex	do	13	291,400	34½	31½	87.42	36 89
Brooks & Thomas (S)	do	do	3	68,200	34½	31½	20.46	8 95
Broome, Chas. P. (S)	San Angelo, Tex	do	7	151,000	43	40	45.30	19 42
Browder, J. M. (S)	Giles, Tex	do	25	550,000	34½	31½	179.59	52.13
Brown, E. P. (S)	Hereford, Tex	do	3	79,100	34½	31½	23.73	
Do	Canyon City, Tex	do	2	46,800	34½	31½	14 04	
Do	do	do	16	290,700	34½	31½	117.21	
Do	Amarillo, Tex	do	1	24,200	34½	31½	7 26	
			22	540,800			162.24	56.12
Brown, T. A.	Berwyn, Okla	do	2	44,000	34½	30½	16.50	7.01
Brummett & Fuqua (S)	Washburn, Tex	Kansas City, Kans	4	90,300	34½	31½	27.09	
Do	Claude, Tex	do	4	88,000	34½	31½	26.40	
			8	178,300			53.49	17.21
170								
Bugbee, T. S. (S)	Southard, Tex	do	13	286,300	34½	31½	85.89	

Bugbee, T. S. (S)	Clarendon, Tex	South St. Joseph, Mo	3	66,000	34½	31½	19.80	
			16	352,300			105.69	39.71
Burman & Wheeler	Amarillo, Tex	Kansas City, Kans	6	134,200	34½	31½	40.26	14.96
Burnett, S. B. (S)	Panhandle, Tex	do	16	382,700	34½	31½	114.81	37.53
Butterly Bros. (S)	Berwyn, Okla	do	2	44,800	34½	30½	16.80	5.58
Byrd-Burnett & Divers. (S)	Bovina, Tex	do	4	92,400	34½	31½	27.72	12.06
Callahan, S. W	Claude, Tex	do	22	510,800	34½	31½	153.24	62 46
Camp, J. A. (S)	Paoli, Okla	do	20	491,500	33½	30½	147.45	51.59
Camp & McCrummen. (S)	do	do	5	119,000	33½	30½	35.70	13.60
Campbell, H. C	San Angelo, Tex	do	2	44,000	43	40	13.20	5 07
Campbell, R. A. (S)	Claude, Tex	do	4	92,000	34½	31½	27.60	10 45
Capitol Freehold Land & Investment Co. (S)	Bovina, Tex	South St. Joseph. Mo	45	1,048,200	34½	31½	314.46	99.47
Carruthers, R.L. & J.W. (S)	San Angelo, Tex	Kansas City, Kans	4	91,700	43	40	27.51	8.53
Casper, J. M. (S)	Memphis, Tex	do	5	110,000	34½	31½	33.00	14.25
Cauble, C. M. (S)	Stanton, Tex	do	2	44,000	43	40	13.20	4.24
Chase & Hudelson (S)	Portales, N. Mex	do	5	119,000	36½	35	17.85	7.68
Chesher, A. L. (S)	Bovina, Tex	South St. Joseph, Mo	2	44,000	34½	31½	13.20	
Do	do	Kansas City, Kans	2	46,200	34½	31½	13.86	
			4	90,200			27.06	12.57
Childress National Bank	Hereford, Tex	do	2	42,500	34½	31½	12.75	5.37
Clark, Sterling P. (S)	Miami, Tex	do	12	286,500	33	30	85.95	26 60
Cobb, L. C. (S)	Claude, Tex	do	2	46,100	34½	31½	13.83	6.00
Coburn, J. M. (S)	Washington Spur, N.Mex	South St. Joseph, Mo	6	115,000	44	41	42 90	18 50
Coffee, E. E	Giles, Tex	Kansas City, Kans	4	92,900	34½	31½	27.87	
Do	Canadian, Tex	do	3	71,400	31	28	21.42	
			7	164,300			49 29	19.28
Collins, C. E. (S)	Canyon City, Tex	do	2	49,700	34½	31½	14 91	6.48
Combs, J. E. & B. W	Woodward, Okla	do	5	117,300	29½	26½	35 19	11.24
Combs, Z. E. (S)	do	do	2	45,200	29½	26½	13.56	5.49

CLAIMS AGAINST ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Continental Land & Cattle Co. (S)	Estelline, Tex	South St. Joseph, Mo.	91	2,048,400	34½	31½	$611.52	$202.79
Courtney, Wm. (S)	Edmond, Okla	Kansas City, Kans	2	45,800	31	28	13.74	5.54
Cox, C. B	Panhandle, Tex	do	3	70,500	34½	31½	21.15	8.98
Cox & Epps. (S)	Canyon City, Tex	South St. Joseph, Mo.	8	178,100	34½	31½	53.43	22.77
Cox, John	do	Kansas City, Kans	2	44,000	34½	31½	13.20	5.67
Crabtree & Caldwell. (S)	Clarendon, Tex	South St. Joseph, Mo.	26	593,400	34½	31½	178.02	75.25
Crabtree & Whittington. (S)	Tulia, Tex	do	15	353,300	34½	31½	105.99	39.87
Crawford, James. (S)	Fort Worth, Tex	Kansas City, Kans	141	3,110,600	36½	33½	936.69	
Do	Purcell, Okla	do	84	2,238,200	32½	29	783.37	
171			225	5,348,800			1,720.06	651.33
Crawford, J. T. (S)	Pampa, Tex	do	2	47,600	34	30½	16.66	5.43
Creis, J. M. (S)	Gage, Okla	do	7	154,600	29½	26½	46.38	
Do	Higgins, Tex	do	3	70,800	29½	26½	21.24	
Do	Pampa, Tex	do	1	25,300	34	30½	8.85	
			11	250,700			76.47	14.93
Crelmer, J. B. (S)	Ardmore, Okla	South St. Joseph, Mo.	3	66,200	35	30½	28.14	12.25
Culwell, W. A. (S)	Marietta, Okla	Kansas City, Kans	3	77,900	36	32	31.16	10.35
Darnell & Bryan. (S)	Hereford, Tex	do	7	154,800	34½	31½	46.44	14.41
Darnall, R. J. (S)	do	do	3	67,800	34½	31½	20.34	6.31
Daugherty, Jno. D. (S)	Wynnewood, Okla	do	2	43,100	34	30½	14.01	4.55
Davidson, Sam. (S)	Portales, N. Mex	South St. Joseph, Mo.	50	1,184,000	36½	35	177.60	

Davidson, Sam. (S)	Portales, N. Mex	Kansas City, Kans	15	333,600	36½	35	50.04	
			65	1,517,600			227.64	81.44
Dorsey, J. S. (C)	Higgins, Tex	do	53	1,250,800	29½	26½	374.24	
Do	do	St. Joseph, Mo	17	397,600	29½	26½	119.28	
Do	Canadian, Tex	do	7	162,200	31	28	48.66	
			77	1,810,600			542.18	213.90
Dysart, T. A	Bovina, Tex	South St. Joseph, Mo	3	68,000	34½	31½	20.40	8.86
Douglas, J. W	Higgins, Tex	do	2	44,000	29½	26½	13.20	4.27
Eddleman, J. B. (S)	Parsons, Tex	Chicago, Ill	6	140,600	52¾	49¾	42.18	19.17
Eddleman, W. H. (S)	do	do	30	675,800	52¾	49¾	202.74	66.63
Ellison, T. H. (S)	El Reno, Okla	Kansas City, Kans	2	44,000	31	28	13.20	4.33
Epps, Henry. (S)	Canyon City, Tex	South St. Joseph, Mo	18	406,700	34½	31½	122.01	52.24
Esch Bros. (S)	Tonkawa, Okla	Kansas City, Kans	4	95,300	20½	19	14.30	
Do	do	do	4	91,300	22	19	27.37	
			8	186,600			41.67	16.17
Farmer, B. F	Shattuck, Okla	do	6	135,300	29½	26½	40.59	12.78
Fergerson, Britain & Van Eaton (C)	Clarendon, Tex	South St. Joseph, Mo	26	593,500	34½	31½	178.05	
Do	Tulia, Tex	do	2	46,200	34½	31½	13.86	
Do	Rowe, Tex	do	2	46,000	34½	31½	13.80	
172			30	685,700			205.71	79.68
Ferguson, G. C. (S)	Clarendon, Tex	do	1	24,800	34½	31½	7.44	3.24
Fidler, C. C. & F.O. (S)	Cresson, Tex	Chicago, Ill	10	224,900	52¾	49¾	67.47	26.60
Fidler, D. W. (S)	do	do	18	400,600	52¾	49¾	120.18	47.28
Finley, J. B	Roswell, N. Mex	South St. Joseph, Mo	3	70,500	43	39	28.20	10.34
Fleming, E. R. (C)	Kenna, N. Mex	Kansas City, Kans	9	227,400	42	39	68.22	21.44
Franklin, Felix S. (S)	Canyon City, Tex	do	5	119,800	34½	31½	35.94	

CLAIMS AGAINST ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.
THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Franklin, Felix S. (S)	Amarillo, Tex	Kansas City, Kans	11	251,100	34½	31½	$ 75 33	
			16	370,000			111 27	$48.54
Freeman, R. L. (S)	Davis, Okla	South St. Joseph, Mo	6	132,000	34	30½	13 91	17.25
Fross, Henry. (S)	Higgins, Tex	Kansas City, Kans	12	274,700	29½	26½	81 17	35.75
Fuqua, J. L. (S)	Hereford, Tex	do	1	30,000	34½	31½	28 98	9 16
Gatewood, R. E. (S)	Canyon City, Tex	do	26	624,200	34½	31½	196 45	76 49
Gibbs Bros. (S)	Pampa, Tex	do	17	408,000	34	31	153 45	46 84
Gibson, J. H. (S)	Memphis, Tex	do	2	44,000	34½	31½	13 20	4 34
Gibson, J. M.	Davis, Okla	South St. Joseph, Mo	3	68,000	34	30½	22 49	9 71
Gillespie, L. J. (S)	Panhandle, Tex	Kansas City, Kans	6	141,500	34½	31½	42 36	14 87
Gillespie, W. B. (S)	Panhandle, Tex	do	4	96,500	34	29½	28 98	9 20
Gist, John. (S)	Giles, Tex	do	4	85,000	34½	31½	26 40	10 01
Globe Val. (S)	Ballinger, Tex	do	8	176,800	43	40	52 04	20.76
			11	245,905	34½	31½	73 77	
Goffinet, F. J. (S)	Memphis, Tex	do	2	40,000	34½	31½	12 20	
Do	Giles, Tex	do						
			13	289,905			85.97	28.93
Good & Van Natta. (S)	Bovina, Tex	do	28	625,500	34½	31½	187.65	60.59
Good, Wallace. (S)	do	South St. Joseph, Mo	9	202,700	34½	31½	60.81	
Do	Panhandle, Tex	Kansas City, Kans	1	22,000	34½	31½	6 60	
Do	Bovina, Tex	do	68	1,552,300	34½	31½	459 69	
			77	1,757,000			527.10	187.31
Gordon, J. W. (S)	Hereford, Tex	do	4	86,600	34½	31½	25.98	

Gordon, J. W. (S)	Hereford, Tex	South St. Joseph, Mo	4	92,000	34½	31½	27.60	
173			8	178,600			53.58	22.92
Griffin, J. W	Alva, Okla	Kansas City, Kans	2	44,000	23	20	13.20	4.29
Hale, James. (S)	Waynoka, Okla	do	3	76,700	25½	22½	23.01	7.38
Hall, Jack. (S)	Portales, N. Mex	South St. Joseph, Mo	17	394,300	36½	35	59.15	18.59
Hall, J. F. (S)	Clarendon, Tex	do	3	66,000	34½	31½	19.80	6.43
Hall, J. G. (S)	Memphis, Tex	do	12	270,700	34½	31½	81.21	34.43
Halsell, W. E. (S)	Bovina, Tex	Kansas City, Kans	74	1,716,000	34½	31½	514.80	195.37
Hammond Cattle Co	Miami, Tex	South St. Joseph, Mo	2	46,600	33	30	13.98	4.33
Hargrove, D. M	Canadian, Tex	Kansas City, Kans	14	334,700	31	28	100.41	36.73
Harris, C. H. (S)	Pampa, Tex	South St. Joseph, Mo	7	157,900	34	30½	55.26	
Do	Panhandle, Tex	do	5	112,800	34½	31	33.84	
			12	270,700			89.10	36.03
Harrison & Patterson. (S)	do	Kansas City, Kans	25	595,300	34½	31½	169.59	
Do	do	South St. Joseph, Mo	40	894,000	34½	31½	268.20	
Do	Canyon City, Tex	do	6	136,000	34½	31½	40.80	
			71	1,595,300			478.59	187.69
Harrold & Barnes. (S)	Wynnewood, Okla	Kansas City, Kans	2	44,700	34	30½	14.53	6.06
Hart, C. S	Bovina, Tex	South St. Joseph, Mo	3	70,100	34½	31½	21.03	9.13
Hart & Newberry	do	do	3	70,400	34½	31½	21.12	9.19
Hawks, L. L. (S)	Purcell, Okla	Kansas City, Kans	4	93,900	32½	29	32.87	11.58
Higgins, J. M. (S)	Marietta, Okla	do	2	51,200	36	32	20.48	6.80
Higgins, W. A	Hereford, Tex	do	2	44,200	34½	31½	13.26	5.83
Hitchcock, Mrs. C. A	Canyon City, Tex	do	2	51,500	34½	31½	15.45	5.66
Hoffman, F. (S)	do	do	5	111,700	34½	31½	33.51	12.69
Hogan & Crawford. (S)	Tulia, Tex	do	12	272,200	34½	31½	81.66	31.04
Holland, H. & R. (S)	Canyon City, Tex	do	4	88,600	34½	31½	26.58	10.22
Holland & Peach. (S)	do	do	4	90,200	34½	31½	27.06	10.26
Hoover & Camp. (S)	Berwyn, Okla	do	4	89,500	34½	30½	33.56	

CLAIMS AGAINST ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Hoover & Camp. (S)	Davis, Okla	Kansas City, Kan	10	230,300	34	30½	$ 74.85	
			14	319,800			108.41	$35.53
Horn, Joe. (S)	Clarendon, Tex	South St. Joseph, Mo	5	113,000	34½	31½	33.90	14 30
Horn & Whittington. (S)	do	do	5	110,000	34½	31½	33.00	12 32
Horse Shoe Land & Cattle Co. (S)	Texico, N. Mex	Kansas City, Kans	39	884,700	38	35	265.41	
Do	Panhandle, Tex	South St. Joseph, Mo	2	45,500	34½	31½	13.65	
			41	930,200			279.06	118.09
Howard, S. T. (S)	Hereford, Tex	Kansas City, Kans	21	467,300	34½	31½	140.19	59.96
Howe & Cress. (S)	Gage, Okla	Kansas City, Kans	18	418,300	29½	26½	125.49	
Do	Shattuck, Okla	do	11	250,300	29½	26½	75.09	
Do	Higgins, Tex	do	8	185,000	29½	26½	55.50	
			37	853,600			256.08	111.48
174								
Hudson, Nick W. (S)	do	do	17	384,100	29½	26½	115.23	
Do	Woodward, Okla	do	19	456,700	29½	26½	137.01	
			36	840,800			252 24	100.46
Hoffman & Son. (C)	Canyon City, Tex	do	4	92,000	34½	31½	27.60	8.68
Hunt, T. D. (S)	Hereford, Tex	do	9	207,700	34½	31½	62.31	24.49
Hunter, G. W. (S)	Cresson, Tex	Chicago, Ill	6	135,200	52½	49½	40.56	15.99
Hunter, N. (S)	Claude, Tex	Kansas City, Kans	2	44,400	34½	31½	13.32	4.25
Hutchins, A	Berwyn, Okla	do	2	45,200	34½	30½	16.95	7.34
Hutton, T. S. (C)	Bovina, Tex	do	5	109,200	34½	31½	32.76	14.34

Iowa Land & Cattle Co. (S)	Clarendon, Tex	South St. Joseph, Mo	8	179,400	34½	31½	53.82	19.11
Jackson Bros. (S)	Amarillo, Tex	Kansas City, Kans	6	146,300	34½	31½	43.89	14.07
Jackson, Jno. (S)	Memphis, Tex	do	7	154,700	34½	31½	46.41	19.97
James, C. E. (S)	Carlsbad, N. Mex	do	2	48,400	46	41	14.52	4.52
Johnson & Crow. (S)	Panhandle, Tex	do	8	191,200	34½	31½	57.36	24.58
Johnston, R. W. (C)	Hereford, Tex	do	3	66,000	34½	31½	19.80	
Do	Higgins, Tex	do	17	420,100	29½	26½	126.03	
Do	La Junta, Colo	do	8	201,300	29	26½	50.33	
Do	Rocky Ford, Colo	do	4	101,100	31	27½	35.39	
			32	788,500			231.55	92.04
Jones, A. B	Memphis, Tex	do	2	47,100	34½	31½	14.13	4.37
Jones, K. W. (S)	Portales, N. Mex	South St. Joseph, Mo	5	107,400	36½	35	16.11	5.97
Jowell, G. R. (S)	Hereford, Tex	Kansas City, Kans	5	113,600	34½	31½	34.08	14.78
Kapp, H. (S)	Lindsay, Okla	do	14	310,000	33½	30½	93.00	
Do	Fort Worth, Tex	do	6	132,000	36½	33½	39.60	
			20	442,000			132.60	54.76
Keenan, Tom	Hereford, Tex	do	3	66,000	34½	31½	19.80	7.31
Kibbe, R. J. (S)	do	do	2	44,600	34½	31½	13.38	4.94
Kennard, M. L. (S)	Cleburne, Tex	Chicago, Ill	5	114,400	52½	49½	34.32	11.29
Kerby, W. B. (S)	Purcell, Okla	Kansas City, Kans	32	777,500	32½	29	272.12	
Do	Fort Worth, Tex	do	11	242,000	36½	33½	72.60	
175			43	1,019,500			344.72	128.83
Kerr, Jno	Portales, N. Mex	South St. Joseph, Mo	12	267,100	36½	35	40.06	17.65
Kilgore, C. L. (S)	Amarillo, Tex	Kansas City, Kans	4	92,500	34½	31½	27.75	11.08
Kinder, R. C. (S)	Cresson, Tex	Chicago, Ill	9	201,500	52½	49½	60.45	23.84
Knight, I. A	Canyon City, Tex	South St. Joseph, Mo	27	601,800	34½	31½	180.54	75.72
Lael, Noah. (S)	Wynnewood, Okla	Kansas City, Kans	19	436,700	34	30½	141.92	51.99
Lance, J. T	Wayne, Okla	do	9	219,100	33	29½	76.68	28.48
Large, A. B	Portales, N. Mex	do	2	44,000	36½	35	6.60	2.00

CLAIMS AGAINST ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Leary & Blum. (S)	Memphis, Tex	Kansas City, Kans	2	44,000	34½	31½	$ 13.20	$ 4.24
LeFors, Perry. (S)	Pampa, Tex	do	10	234,800	33½	30½	70.44	30.73
Lewis & Letts. (S)	Claude, Tex	South St. Joseph, Mo	1	22,000	34½	31½	6.60	
Do	Clarendon, Tex	do	8	178,700	34½	31½	53.61	
			9	200,700			60.21	22.15
Lewis, J. H	Bovina, Tex	do	4	95,200	34½	31½	28.56	10.66
Lewis & Molesworth. (S)	do	do	37	839,500	34½	31½	251.85	
Do	Portales, N. Mex	do	3	66,900	43	35	53.52	
Do	Canyon City, Tex	do	97	2,285,400	34½	31½	685.62	
Do	Goodnight, Tex	do	2	44,000	34½	31½	13.20	
Do	Clarendon, Tex	do	16	365,200	34½	31½	109.56	
			155	3,601,000			1,113.75	393.92
Lewis & Pyle. (S)	Goodnight, Tex	do	8	185,600	34½	31½	55.68	20.88
Lewis, W. J. (S)	Clarendon, Tex	do	3	64,200	34½	31½	19.26	
Do	Canyon City, Tex	do	3	69,000	34½	31½	20.70	
Do	Portales, N. Mex	do	2	25,200	43	35	36.16	
			8	178,400			76.12	30.86
Littlefield, Geo. W. (S)	Kenna, N. Mex	Kansas City, Kans	5	120,500	42	39	36.15	
Do	do	South St. Joseph, Mo	13	300,300	42	39	90.09	
Do	Bovina, Tex	do	6	138,000	34½	31½	41.40	
			24	558,800			167.64	67.56

Longnoffer, G	Shattuck, Okla	Kansas City, Kans	4	90,800	29½	26½	27.24	11.87
Love, B. H. (S)	Purcell, Okla	do	1	30,500	32½	29	10.68	
Do	Fort Worth, Tex	do	2	44,000	36½	33½	13.20	
176			3	74,500			23.88	7.66
Lovett, H. B. (S)	Pampa, Tex	Kansas City, Kans	3	79,400	34	30½	27.79	10.29
McAninch, J. L.	Fort Worth, Tex	South St. Joseph, Mo	3	69,000	36½	33½	20.70	8.54
McCrummen, E. L. (S)	Paoli, Okla	Kansas City, Mo	13	311,900	33½	30½	93.57	35.34
McCrummen, J.	Hereford, Tex	Kansas City, Kans	6	134,300	34½	31½	40.29	17.33
McCuistion, N. W. (S)	Miami, Tex	do	2	48,400	33	30	14.52	5.53
McDowell, J. H.	Amarillo, Tex	South St. Joseph, Mo	3	69,900	34½	31½	20.67	6.47
McElreath, R. T.	Memphis, Tex	Kansas City, Kans	2	44,000	34½	31½	13.20	4.10
McFarland, Chas. (S)	Parsons, Tex	Chicago, Ill	5	118,100	52½	49½	35.43	13.97
McFarland, Hays. (S)	do	do	5	114,400	52½	49½	34.32	13.57
McGee, N. S. (S)	Amarillo, Tex	Kansas City, Kans	2	44,400	34½	31½	13.32	5.70
McGee, T. F. (S)	do	do	14	345,200	34½	31½	103.56	32.42
McGuckin, W. (S)	Tonkawa, Okla	do	4	93,800	20½	19	18.07	5.68
McEntire, T. J. (S)	Miami, Tex	do	6	145,000	33	30	43.50	15.95
McKay, G. A. (S)	Higgins, Tex	do	10	221,750	29½	26½	66.52	28.52
McMillian, G. W. (S)	Hereford, Tex	do	10	243,700	34½	31½	73.11	28.63
McMurtry Bros. (S)	Clarendon, Tex	do	1	25,100	34½	31½	7.53	
Do	Rowe, Tex	do	1	22,000			6.60	
			2	47,100			14.13	4.48
McReynolds, J. L.	Canyon City, Tex	do	10	226,500	34½	31½	67.95	24.49
Martin, J. E.	Clarendon, Tex	South St. Joseph, Mo	4	88,000	34½	31½	26.40	11.62
Matador Land & Cattle Co. (S)	Estelline, Tex	Kansas City, Kans	77	1,844,800	34½	31½	553.44	172.02
Matsler & Cox. (S)	Canyon City, Tex	South St. Joseph, Mo	5	114,000	34½	31½	34.20	15.08
Mayer, Max & Abe	San Angelo, Tex	do	4	88,000	43	40	26.40	9.92
Meeks, A. H. (C)	Wayne, Okla	Kansas City, Kans	3	71,000	33	29½	24.85	10.83
Megert, E. (S)	Hereford, Tex	do	6	129,700	34½	31½	38.91	17.08
Megert, R. A. (C)	do	do	5	108,500	34½	31½	32.55	13.79

CLAIMS AGAINST ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest
			No.	*Pounds.*	*Cents.*	*Cents.*		
Merchant, Cal. (S)	Panhandle, Tex	Kansas City, Kans	1	22,800	34½	31½	$ 6.84	
Do	do	South St. Joseph, Mo	7	175,500	34½	31½	52.65	
			8	198,300			59.49	$ 19.77
Merritt, J. F	Hereford, Tex	Kansas City, Kans	2	44,000	34½	31½	13.20	5.83
Meyers & Yeager	Bovina, Tex	South St. Joseph, Mo	5	124,600	34½	31½	37.38	13.96
Milam, W. M. (S)	Giles, Tex	Kansas City, Kans	2	47,600	34½	31½	14.28	
Do	Memphis, Tex	Do	2	45,000	34½	31½	13.68	
			4	93,000			27.96	9.44
Montague Bros	San Angelo, Tex	do	10	217,300	43	40	65.19	20.36
Montgomery & Goffinet (S)	Memphis, Tex	do	4	85,500	34½	31½	25.65	11.09
Montgomery, J. A. (S)	do	do	4	96,100	34½	31½	28.83	
Do	do	do	12	266,600	34½	31½	79.98	
			16	362,700			108.81	47.28
177								
Moody, Robt., & Son. (S)	Canadian, Tex	do	28	647,100	34	28	194.13	
Do	Higgins, Tex	do	29	671,500	29½	26½	201.45	
Do	do	South St. Joseph, Mo	4	92,800	29½	26½	27.84	
			51	1,411,400			423.42	157.89
Moore, F., & Co	Clarendon, Tex	do	2	44,000	34½	31½	13.20	5.61
Moore, F. L	Canyon City, Tex	do	4	89,200	34½	31½	26.76	11.74
Moreman, C. R. (S)	Hereford, Tex	Kansas City, Kans	2	44,900	34½	31½	13.47	4.27
Moreman, W. H. (S)	Giles, Tex	do	6	138,900	34½	31½	41.67	13.41
Morris & Boone	Purcell, Okla	do	3	75,500	32½	29	26.42	8.58
Morris, R. A	Oklahoma City, Okla	South St. Joseph, Mo	2	44,900	31	28	13.47	5.48

Morris, Watt. (C)	Purcell, Okla	Kansas City, Kans	5	113,600	32½	29	39.78	16·23	
Morrison, T. W	Canyon City, Tex	South St. Joseph, Mo	7	156,700	34½	31½	47.01	19.84	
Morse, J. S	Pampa, Tex	Kansas City, Kans	7	157,100	33½	30½	47.13	20.32	
Muier, C. J	do	do	2	48,300	34	30½	16.90	5.32	
Muncy, C. M. (S)	Clarendon, Tex	South St. Joseph, Mo	5	110,000	34½	31½	33.00	14.02	
Murray & Boss	Giles, Tex	Kansas City, Kans	7	132,000	34½	31½	39.60	16.81	
Murray, W. G	Canyon City, Tex	South St. Joseph, Mo	10	228,400	34½	31½	68.52	29.45	
Nations, Fred. (S)	Hereford, Tex	do	4	91,900	34½	31½	27.57	11.69	
Nay, S. H. (S)	Bovina, Tex	do	6	138,100	34½	31½	41.43	17.72	
Neely, J. C	Higgins, Tex	Kansas City, Kans	2	47,500	29½	26½	14.25	6.27	
Neely, J. M. (S)	Amarillo, Tex	do	5	112,800	34½	31½	33.84	14.38	
Newman & Trammell. (S)	Bovina, Tex	do	4	88,000	34½	31½	26.40	11.39	
Odom, G. G. (S)	Ballinger, Tex	do	8	183,300	43	40	54.99	22.88	
Odom, W. W. (S)	Portales, N. Mex	do	2	42,500	36½	35	6.37	2.70	
O'Keefe Bros. (S)	Panhandle, Tex	South St. Joseph, Mo	2	44,000	34½	31½	13.20	5.05	
O'Laughlin, Tnos. (S)	Miami, Tex	do	8	178,100	33	30	53.43		
Lp	do	Kansas City, Kans	3	70,500	33	30	21.15		
			11	248,600			74.58	27.50	
Owen & Johnson. (S)	Purcell, Okla	do	17	406,100	32½	29	142.14	46.02	
Owen, J. W. (S)	Clarendon, Tex	do	7	170,000	34½	31½	51.00	15.99	
Parker, P. L	Hereford, Tex	do	2	42,500	34½	31½	12.75	3.97	
Patching, F. G. (S)	Canyon City, Tex	do	7	163,000	34½	31½	48.90	21.10	
Patten & Beckner	Higgins, Tex	South St. Joseph, Mo	9	205,980	29½	26½	61.79	26.94	
Patten & Walker	do	Kansas City, Kans	3	66,000	29½	26½	19.80	6.35	
Patterson, D. M	Woodward, Okla	do	6	134,000	29½	26½	40.20	12.97	
Patterson, J. A. (S)	Estelline, Tex	South St. Joseph, Mo	5	110,400	34½	31½	33.12	10.88	
Payne, Joe N. (C)	Marietta, Okla	Kansas City, Kans	8	179,100	36	32	71.64	28.02	
Peery, Joe	Purcell, Okla	Kansas City, Kans	4	92,400	32½	29	32.35		
Do	Fort Worth, Tex	do	2	44,000	36½	33½	13.20		
178			6	136,400			45.55	17.65	
Penner, Felix. (S)	Daugherty, Okla	do	6	144,500	34	30½	46.96	18.17	
Pierce, L. A. (S)	Canyon City, Tex	do	3	80,600	34½	31½	24.18	8.84	
Popham, Al. (S)	Miami, Tex	do	3	74,200	33	30	22.26	7.30	

CLAIMS AGAINST ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest
			No.	*Pounds.*	*Cents.*	*Cents.*		
Price, N. A	Hereford, Tex	Kansas City, Kans	5	119,300	34½	31½	$35.79	$15.31
Price, Henry (8)	Purcell, Okla	do	7	167,700	32½	29	58.69	20.93
Puckett, J. W. (8)	Portales, N. Mex	do	5	120,900	30½	35	18.13	6.63
							27.93	
Pyle, T. M. (8)	Estelline, Tex	South St. Joseph, Mo	4	93,100	34½	31½		
Do	Newlin, Tex	do	1	24,200	34½	31½	7.26	
			5	117,300			35.19	11.39
Quinn, J. K. (8)	Pampa, Tex	Kansas City, Kans	11	243,300	34	30½	85.12	32.01
Ramsey, C. F. (8)	Clarendon, Tex	South St. Joseph, Mo	6	134,800	34½	31½	40.44	17.19
Rattan & Murray, (8)	Giles, Tex	Kansas City, Kans	3	67,400	34½	31½	20.22	6.52
Reeves, O. T. (8)	Clarendon, Tex	South St. Joseph, Mo	9	202,400	34½	31½	60.72	25.92
							192.57	
Rhea, J. E. and J. W. (8)	Bovina, Tex	Kansas City, Kans	27	641,900	34½	31½		
Do	do	South St. Joseph, Mo	8	193,200	34½	31½	57.96	
			35	835,100			250.53	81.68
Roberts Bros. (C)	Woodward, Okla	Kansas City, Kans	2	48,000	29½	26½	14.40	6.91
Roberts, E. L.	do	do	1	22,000	29½	26½	6.60	2.53
Robertson, J. B. (8)	Hereford, Tex	do	3	71,100	34½	31½	21.34	7.76
Rockefeller, A. W.	Bovina, Tex	South St. Joseph, Mo	4	88,800	34½	31½	26.64	11.50
Rogers, R. C.	Purcell, Okla	Kansas City, Kans	6	149,200	32½	29	52.22	22.70
Rowe, Alfred, estate (8)	Clarendon, Tex	South St. Joseph, Mo	13	308,800	34½	31½	92.64	29.35
Rourke, E. (8)	La Junta, Colo	Kansas City, Kans	4	89,100	29	26½	22.28	8.66
Royer, C. E., estate (8)	Berwyn, Okla	South St. Joseph, Mo	109	3,883,900	34½	30½	1,456.48	523.98
Do	do	Kansas City, Kans	4	100,700	34½	30½	37.76	
			173	3,984,600			1,494.24	

Rusk & Brown. (S)	Canyon City, Tex	do	7	158,700	34½	31½	47.61	20.79
Russell, J. O	Higgins, Tex	do	2	46,200	29½	26½	13.86	4.44
Sachse, G. A. (S)	Panhandle, Tex	do	3	68,700	34½	31½	20.61	8.77
Sacra, J. B. (S)	Purcell, Okla	do	4	97,900	32½	29	34.27	10.93
Sacra, R. C. & Son. (S)	do	do	26	583,000	32½	29	204.05	
Do	Lindsay, Okla	do	2	44,200	32½	29	15.47	
1907—179			28	627,200			219.52	79.94
Sanders, R. J. & C. C. (S)	Hereford, Tex	do	5	120,900	34½	31½	36.27	15.75
Sayre, S. T. (S)	Clarendon, Tex	South St. Joseph, Mo	2	44,600	34½	31½	13.38	4.29
Scivally, Robert F. (S)	Berwyn, Okla	Kansas City, Kans	4	88,000	34½	30½	33.00	10.88
Scruggs & Hilburn	Hereford, Tex	do	4	88,000	34½	30½	26.40	10.09
Sharp, J. P. (3)	Purcell, Okla	do	11	261,900	32½	29	91.67	36.83
Sherwood, H. E	Panhandle, Tex	do	6	143,600	34½	31½	42.18	18.20
Sperlock & Roberts. (S)	Higgins, Tex	do	1	24,200	29½	26½	7.26	3.16
Simmons, B. F	Purcell, Okla	do	4	92,600	32½	29	32.38	10.94
Simpson, J. J. (S)	Canyon City, Tex	South St. Joseph, Mo	10	224,800	34½	31½	67.44	28.47
Slack, J. W. (S)	Higgins, Tex	Kansas City, Kans	2	46,200	29½	26½	13.86	6.11
Slaughter, Geo. M. (S)	Bovina, Tex	do	32	747,400	34½	31½	224.22	
Do	South St. Joseph, Mo	do	17	391,500	34½	31½	117.45	
			49	1,138,900			341.67	126.18
Slavin, J. W. (S)	Rosenberg, Tex	do	4	88,300	51½	48½	26.49	8.52
Slocum, Fred. (S)	Crisson, Tex	Chicago, Ill	8	177,500	52½	49½	53.25	20.94
Smith, G. L	Memphis, Tex	Kansas City, Kans	1	22,000	34½	31½	6.60	2.70
Smith & Bitting. (S)	White Deer, Tex	do	25	585,700	34½	31½	175.71	56.22
Solander, A. L	Higgins, Tex	do	2	45,800	34½	31½	13.74	4.36
Southwood, J. E. (S)	Panhandle, Tex	do	2	46,500	34½	31½	13.95	6.05
Sowder & Popham. (S)	Amarillo, Tex	do	17	388,600	34½	31½	116.58	
Do	Pampa, Tex	do	2	46,300	33½	30½	13.89	
Do	Panhandle, Tex	do	1	22,400	34½	31½	6.72	
Do	Canadian, Tex	do	1	25,100	31	28	7.53	
			21	482,400			144.72	62.53

CLAIMS AGAINST ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,
THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Sparks-Peery&Sacra. (S)	Purcell, Okla	Kansas City, Kans	25	567,200	32½	29	$ 198.52	$ 75.73
Sperlock & Roberts. (S)	Higgins, Tex	do	3	71,000	29½	26½	21.30	9.06
Stone, J. P. (S)	Portales, N. Mex	South St. Joseph, Mo	4	95,100	36½	35	14.27	
Do	Bovina, Tex	do	2	46,300	34½	31½	13.89	
			6	141,400			28.16	11.32
Stone & Nay. (S)	Kenna, N. Mex	do	8	180,300	42	39	54.09	23.26
Swearingen, H. S. (S)	Memphis, Tex	Kansas City, Kans	30	676,000	34½	31½	202.86	69.89
Thompson Bros. (S)	Paoli, Okla	do	7	173,100	33½	30½	51.93	22.94
Thompson, J. D. (S)	Hereford, Tex	do	22	533,900	34½	31½	160.17	52.22
Thompson & Rose. (S)	Marietta, Okla	do	28	694,000	36	32	277.60	97.11
Thompson&Thompson(S)	Hereford, Tex	Kansas City, Kans	143	3,258.40	34½	31½	977.62	
Do	do	South St. Joseph, Mo	16	375,500	34½	31½	112.65	
180			159	3,634,240			1,090.27	435.57
Thurston, J. B. (S)	Purcell, Okla	Kansas City, Kans	4	90,100	32½	29	31.54	12.88
Tippett, Roy. (S)	Pauls Valley, Okla	do	2	48,000	33½	30½	14.40	4.78
Tolbert, W. S. (S)	Miami, Tex	South St. Joseph, Mo	4	87,300	33	30	26.19	9.60
Trammell, F. P. (S)	Canadian, Tex	Kansas City, Kans	31	720,800	31	29	216.24	80.03
Trammell, Thos., & Sons. S)	Bovina, Tex	do	21	488,800	34½	31½	146.64	63.31
Van Natta Bros. (S)	do	South St. Joseph, Mo	8	184,800	34½	31½	55.44	
Do	do	Kansas City, Kans	32	727,600	34½	31½	218.28	
			40	912,400			273.72	86.37

Von Leimen, H. (S)	Hereford, Tex	Kansas City, Kans	18	435,000	34½	31½	130.50	56.30
Wallace, J. W. (S)	Giles, Tex	do	7	167,300	34½	31½	47.19	16.95
Wallace, W. L	Clarendon, Tex	do	4	91,400	34½	31½	27.42	12.11
Wantland, L. C., trustee (S)	Purcell, Okla	do	16	365,800	32½	29	128.04	47.46
Ward & Tucker. (S)	Canyon City, Tex	do	11	251,800	34½	32½	75.54	29.90
Waters, Thomas	Glazier, Tex	do	2	45,500	31	28	13.65	4.33
Watson, J. O. (S)	Claude, Tex	do	18	429,300	34½	31½	125.79	46.18
White Bros. (S)	Davis, Okla	do	5	115,600	34	30½	37.57	14.46
White, Chas	Edmond, Okla	South St. Joseph, Mo	4	94,600	31	28	28.38	9.22
White, J. P. (S)	Bovina, Tex	do	3	67,800	34½	31½	20.34	8.82
Whitman Bros. (S)	Canyon City, Tex	do	4	97,500	34½	31½	29.25	12.60
Whittenberg, J. A	Pampa, Tex	do	8	193,900	34	30½	67.87	21.43
Wigglesworth, Burns	Fort Worth, Tex	Kansas City, Kans	14	308,000	36½	33½	92.40	
Wigglesworth & Hill. (S)	Purcell, Okla	do		5,100	32½	29	1.79	
			14	313,100			94.19	36.66
Williams Bros. (S)	do	do	12	272,400	32½	29	95.34	
Do	Lakewood, N. Mex	do	1	22,300	32½	29	6.69	
			13	294,700			102.03	42.21
Williams, J. M. (S)	Shattuck, Okla	do	2	49,300	29½	26½	14.79	6.41
Williams, J. W. (S)	Bovina, Tex	do	17	387,100	34½	31½	119.13	35.94
Williams, S. L. (S)	Purcell, Okla	do	9	208,200	32½	29	72.87	25.19
Wilson, J. E	Amarillo, Tex	do	5	123,300	34½	31½	36.99	16.29
Wilson, J. H. (S)	Hereford, Tex	do	6	134,600	34½	31½	40.38	17.43
Wilson, J. L. (S)	do	do	4	192,700	34½	31½	57.81	19.60
Wilson, L. F. (S)	Fort Sumner, N. Mex	do	4	90,200	42	35	63.14	23.04
Wilson, M. B	Canyon City, Tex	do	3	66,000	31½	31½	19.80	6.41
Wilson & Robinson	Texico, N. Mex	do	5	111,200	36	35	11.12	
Do	Bovina, Tex	do	5	115,200	34½	31½	34.56	
			10	226,400			45.68	19.87

CLAIMS AGAINST ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Wilson, W. (S)	Amarillo, Tex	do	9	209,100	34½	31½	$ 62.73	
Do	Hereford, Tex	do	6	136,900	34½	31½	41.07	
			15	346,000			103.80	$ 27.24
Wilson, W. B. (S)	Clarendon, Tex	do	18	395,800	34½	31½	118.74	44 33
Witherspoon, F., Live Stock Commission Co. (S)	Goodnight, Tex	do	20	446,600	34½	31½	133.98	50 66
Witherspoon, P. S. (S)	Portales, N. Mex	do	5	110,700	36½	35	16.61	6.34
Wolf, Mat. (C)	Davis, Okla	do	3	66,000	34	30¾	21.45	
Do	Wynnewood, Okla	do	2	48,000			15.60	
			5	114,000			37 05	15.80
Woodhouse, L	Parsons, Tex	Chicago, Ill	7	157,100	52¾	49¾	47.13	17.32
Woolwine, A. W. (S)	Kenna, N. Mex	Kansas City, Kans	50	1,148,100	42	39	344.43	
Do	Portales, N. Mex	do	36	808,400	38	35	242.52	
Do	Bovina, Tex	do	65	1,513,800	34½	31½	454.14	
Do	Kenna, N. Mex	South St. Joseph, Mo	7	161,400	42	39	48.42	
Do	Bovina, Tex	do	31	700,900	34½	31½	210.27	
			189	4,332,600			1,299.78	559.10
Word, C. T. (S)	Canyon City, Tex	do	20	466,830	34½	31½	140.84	60.1[illegible]
Yates, Geo. H	Bovina, Tex	do	5	109,900	34½	31½	32.97	12.5[illegible]
Yokley, D. A., Est	Memphis, Tex	Kansas City, Kans	40	914,000	34½	31½	274.20	88.05
Young, G. W. (S)	Berwyn, Okla	do	2	44,000	34	30¾	14.30	5.84

CLAIMS AGAINST CHICAGO & ALTON RAILROAD COMPANY, THE DELIVERING LINE IN EACH SHIPMENT.

Corn & Son. (S)	Benbrook, Tex	Chicago, Ill	39	870,000	52¾	49¼	$261.00	$86.91
Farmer, E. D. (C)	Aledo, Tex	do	28	639,800	52¾	49¼	191.94	62.92
McFarland F.H.&Co. (S)	do	do	6	135,300	52⅝	49⅛	40.59	13.54
McIlhaney & Young	Stephenville, Tex	do	22	499,100	51¾	51½	149.73	49.89
Neiman, E. D. (S)	Yoakum, Tex	do	4	88,100	62¾	59½	26.43	8.65
Sansom, Marion. (S)	Fort Worth, Tex	do	7	154,000	52⅝	49⅛	46.20	15.47
Wigglesworth, Ed. (S)	do	do	1	22,100	52¾	49¼	6.63	2.21

CLAIMS AGAINST CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY, THE DELIVERING LINE IN EACH SHIPMENT.

182

Baker & Strickler. (S)	Tuttle, Okla	Chicago, Ill	19	452,600	47¾	44½	$135.78	$42.81
Baker&Wigglesworth (S)	do	do	4	93,200	47¾	44½	27.96	8.84
Dublin Cotton Oil Co. (S)	Dublin, Tex	do	38	927,900	54½	51½	278.37	115.06
Fidler, C. C. (S)	Cresson, Tex	do	2	44,000	52¾	49¼	13.20	5.81
Fidler, F. O. (S)	do	do	3	66,000	52¾	49¼	19.80	8.73
Scott, Winfield, est. (S)	Boss, Tex	do	11	251,000	55¾	49¼	150.60	
Do	do	do	36	814,800	52⅝	49⅛	244.44	
Do	Plover, Tex	do	16	373,900	52⅝	49⅛	112.17	
Do	Fort Worth, Tex	do	57	1,259,000	52¾	49¼	377.70	
			120	2,698,700			884.9.	289.22
Wimple, Joseph	Tuttle, Okla	do	1	24,000	47¾	44½	7.20	2.28

CLAIMS AGAINST CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, THE DELIVERING LINE IN EACH SHIPMENT.

Allen, Walter. (S)	Chico, Tex	Kansas City, Kans	2	48,000	36½	33½	$14.40	$4.75
Anderson, Joe. (S)	Marlow, Okla	do	3	66,000	34	30¾	21.45	6.97
Atkinson, C E	Chickasha, Okla	do	3	76,500	32½	29	26.77	11.04
Baker, W. H. (S)	Ryan, Okla	do	3	70,500	36	32	28.20	9.36
Ball & Young. (S)	Bowie, Tex	do	6	132,000	36½	33½	39.60	15.50
Bassett, F. E. (S)	Ninnekah, Okla	do	2	42,500	33	29½	14.87	6.42
Batson Bros. (S)	Logan, N. Mex	do	5	111,300	36½	31½	33.39	12.54

CLAIMS AGAINST CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Beeler, F. G. (S)	Ninnekah, Okla	Kansas, City, Kans	6	138,000	33	29½	$ 48.30	$ 18.36
Beeler, Geo. R. (S)	do	do	3	68,000	33	29½	23.80	7.89
Beverly, J. R. (C)	Channing, Tex	St. Joseph, Mo	3	66,000	34½	31½	19.80	6.14
Biggs, A. R. (S)	Duncan, Okla	Kansas City, Kans	3	70,300	34	30½	22.85	7.61
Bilby, N. V. (S)	Ryan, Okla	do	5	111,700	36	32	44.68	14.44
Blocker & Johnson. (S)	Comanche, Okla	do	20	446,300	34	30½	145.05	46.60
Bonder & Huff. (S)	Elk City, Okla	do	2	46,200	31	28	13.86	4.60
Bonner, W. T. (S)	Sayre, Okla	do	6	132,200	31	28	39.66	15.20
Bounds, J. M. (S)	Ryan, Okla	do	11	242,500	36	32	97.00	31.88
Bricker, W. J. (S)	El Paso, Tex	National Stock Yards, Ill	80	1,773,200	63½	60½	531.96	
Do	do	Kansas City, Kans	52	1,149,500	55½	52½	344.85	
			190	2,922,700			876.81	273.37
Brown, A. C	Pocassett, Okla	do	11	254,900	32	29	76.47	27.94
Brown & Peery. (S)	do	do	5	110,600	32	29	33.18	10.83
Burch, A. M. (S)	Chickasha, Okla	do	9	198,600	32½	29	69.51	28.40
Burnett, T. L	Addington, Okla	do	3	66,000	34	30½	21.45	8.48
Burkett, Z. T	Tascosa, Tex	do	5	111,200	34½	31½	33.36	12.24
Burns, C. O. (S)	Ryan, Okla	St. Joseph, Mo	2	45,500	36	32	18.20	8.01
Butler, J. A. (S)	Sayre, Okla	Kansas City, Kans	2	54,600	31	28	16.38	7.23
183								
Butler, J. C. (S)	Carnegie, Okla	do	49	1,079,700	33	30½	269.92	
Do	Fort Cobb, Okla	do	2	48,200	33	29½	16.87	
			51	1,122,000			286.79	118.87

Cameron, Jno. T. (S)	El Paso, Tex	National Stock Yards, Ill	27	594,000	63½	60½	178.20	
Do	Columbus, N. Mex	do	93	2,046,000	63½	60½	613.80	
			120	2,640,000			792.00	243.14
Capitol Freehold Land & Investment Co. (S)	Perico, Tex	St. Joseph, Mo	20	449,000	34½	31½	134.70	
Do	do	Kansas City, Kans	30	690,700	34½	31½	207.21	
			50	1,139,700			341.91	118.07
Carr & Driggers. (S)	Mount View, Okla	do	20	478,800	33½	30½	143.64	46.97
Carroll, J. E. (S)	Erick, Okla	do	18	402,800	31	28	120.84	
Do	Sayre, Okla	do	4	88,900	31	28	26.67	
			22	491,700			147.51	59.27
Caudill Bros. (S)	do	do	48	1,082,400	31	28	324.72	
Do	Erick, Okla	do	4	88,000	31	28	26.40	
			52	1,170,400			351.12	119.21
Cherryholm, T. H.	Chico, Tex	do	10	220,000	36½	33½	66.00	19.77
Chism & Graham. (C)	Marlow, Okla	St. Joseph, Mo	13	289,500	34	30¾	94.09	31.07
Cobb, B. R. (S)	Ryan, Okla	do	9	200,700	36	32	80.28	31.19
Coburn, Geo. J.	Erick, Okla	Kansas City, Kans	2	44,000	31	28	13.20	4.12
			10	227,600	31	28	68.28	
Coffee, E. E.	Elk City, Okla	do	2	44,000			13.20	
Do	Sayre, Okla	do	12	271,600		31	71.48	31.11
Cotner, B. C.	Mangum, Okla	do	2	46,200	34½	31½	13.86	5.99
Cox & Peery. (S)	Chickasha, Okla	do	1	22,000	32½	29	7.70	2.44
Crenshaw, Lee. (S)	Ryan, Okla	do	8	176,000	36	32	70.40	27.59
Cummings, B. S. & J. A.	Addington, Okla	do	2	47,800	34	30½	15.53	5.13
Davis Bros. (S)	Texola, Okla	do	4	92,100	31	28	27.63	8.90

CLAIMS AGAINST CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds*	*Cents.*	*Cents.*		
Davis & Jennings. (S)...	Comanche, Okla.....	Kansas City, Kans.....	1	22,000	34	30½	$7.15	
Do.....	Duncan, Okla.....	....do.....	1	22,700	34	30½	7.38	
184			2	44,700	.....	.....	14.53	$4.64
Dawson, E. (S).....	Kingfisher, Okla.....	....do.....	10	226,400	31	28	67.92	28.02
Dipple, Chas.....	Foss, Okla.....	....do.....	1	24,000	31	28	8.40	2.68
Driggers, W. H. (S).....	Chickasha, Okla.....	....do.....	1	22,400	32½	29	7.84	3.42
Ellison, T. H. (S).....	El Reno, Okla.....	....do.....	36	838,600	31	28	251.58	
Do.....	Fort Cobb, Okla.....	....do.....	1	22,000	33	29½	7.70	
			37	860,600	.....	.....	259.28	136.18
El Reno Hull & Meal Co.	Geary, Okla.....	....do.....	4	90,600	31	28	27.18	8.88
Farwell, J. V. & C. B. (C)	Middlewater, Tex.....	....do.....	8	176,900	34½	31½	53.07	16.20
Fleeman, T. A.....	Erick, Okla.....	....do.....	3	67,000	31	28	20.10	6.44
Florence, Jack. (S).....	Addington, Okla.....	....do.....	4	89,500	34	30½	29.09	9.42
Franks, J. I. (S).....	Mangum, Okla.....	....do.....	6	133,400	34½	31½	40.02	14.29
Frazier, Joe. (S).....	Channing, Tex.....	St. Joseph, Mo.....	10	220,800	34½	31½	66.24	20.81
Fundenberg, T. O. (S)...	Erick, Okla.....	Kansas City, Kans.....	2	44,000	31	28	13.20	4.09
Goff & Thompson. (S)...	Texhoma, Okla.....	....do.....	32	751,100	31	30½	37.55	12.57
Graham, W. B.....	Marlow, Okla.....	....do.....	3	76,200	34	30½	24.76	10.55
Grayson, N. B. (S).....	Ryan, Okla.....	....do.....	5	115,200	36	32	46.08	15.18
Grimmitt Bros. (S).....	Fort Cobb, Okla.....	....do.....	2	51,800	33	29½	18.13	5.76
Glover, R. L. (S).....	Rush Springs, Okla.....	....do.....	1	22,000	33½	30½	6.60	2.89
Hackerott, A. L. (S)....	Nara Viss, N. Mex.....	....do.....	2	49,400	34½	31½	14.82	4.68
Halsell, J. R. (S).....	Jacksboro, Tex.....	....do.....	13	290,500	36½	33½	87.15	29.05
Harness, S. H. (S).....	Ninnekah, Okla.....	....do.....	6	135,700	33	29½	47.49	15.55

Hensley & Brummett	Addington, Okla	St. Joseph, Mo	5	111,700	34	30¼	36.30	
Do	do	Kansas City, Kans	7	165,000			53.62	
			12	276,700			89.92	29.76
Hill, Dave	Chickasha, Okla	do	9	214,900	32½	29	75.21	23.79
Hobbs, T	Rush Springs, Okla	do	2	45,400	33½	30½	13.62	4.40
H. O. W. Cattle Co. (S)	Nara Visa, N. Mex	do	7	163,700	34½	31¼	49.11	
Do	do	do	18	399,700	36½	31½	199.85	
			25	563,400			248.96	96.04
Hubbard, C. D. (S)	Comanche, Okla	do	4	90,200	34	30¼	29.31	10.61
Huggins, J. L. (S)	Ringgold, Tex	do	5	116,000	36½	33½	34.80	11.40
Inman & Thompson. (S)	Chickasha, Okla	do	7	156,400	32½	29	54.74	
Do	Ninnekah, Okla	do	3	66,000	33	29½	23.10	
			10	222,400			77.84	25.69
185								
Jackson, F	Kingfisher, Okla	do	3	66,000	31	28	19.80	8.53
Jackson, Lute. (S)	Addington, Okla	do	3	71,800	34½	30¼	26.92	10.35
James, W. P. & Bro. (S)	Dalhart, Tex	do	8	183,300	34½	31½	54.99	24.02
Johns, Ed. F. & Thos. (S)	Pocasaett, Okla	do	13	296,600	32	29	88.98	29.71
Johnson, H. B. (S)	Chickasha, Okla	do	2	44,000	32½	29	15.40	5.17
Johnson, L. A. (S)	Mangum, Okla	do	3	66,000	34½	31½	19.80	8.19
Johnson, R. M. (S)	Minco, Okla	St. Joseph, Mo	2	46,400	31½	28½	13.92	4.63
Johnston, R. W. (C)	Chickasha, Okla	Kansas City, Kans	5	120,000	32½	29	42.00	
Do	Marlow, Okla	do	4	95,000	34	30¼	30.87	
Do	Amarillo, Tex	do	5	120,000	34½	31½	33.00	
			14	335,000			105.87	39.70
Jones, R. H	Mountain View, Okla	do	2	44,000	33½	30½	13.20	4.89

CLAIMS AGAINST CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Kapp, H. (S)	Rush Springs, Okla	Kansas City, Kans	65	1,449,100	33½	30½	$434.73	
Do	Jacksboro, Tex	do	9	204,800	33½	30½	61.44	
			74	1,653,900			496.17	$186.30
Keith, C. J. (S)	Addington, Okla	do	1	24,000	34	30½	7.80	2.57
Keith, J. L. (S)	do	do	1	24,400	34	30½	7.93	2.61
Kerley, H. A. (S)	do	do	1	22,500	34	30½	7.31	2.41
Kidwell, H. M. (S)	do	do	5	113,500	34	30½	36.89	12.18
Knox, J. W. (S)	Jacksboro, Tex	do	8	176,000	36½	33½	52.80	17.80
Langham, J. B. (S)	Duncan, Okla	do	11	249,600	34	30½	81.12	26.68
Lewis, J. M. (S)	Ryan, Okla	do	11	244,100	36	32	97.64	32.08
Limiley, D. C. (S)	Weatherford, Okla	do	3	66,800	31	28	20.04	6.52
Lindsay, Frank. (S)	Addington, Okla	do	17	392,700	34	30½	127.63	42.72
Linton, W. I. (S)	Kingfisher, Okla	do	2	44,000	30	28	8.80	2.84
Lipps, N. Y. (S)	Okeene, Okla	do	2	48,000	29	26	14.40	6.19
Luttrell & Graham. (S)	Marlow, Okla	South St. Joseph, Mo	5	116,400	34	30½	37.83	12.64
Long, L. W. (S)	Rush Springs, Okla	Kansas City, Kans	14	316,800	33½	30½	95.04	34.81
Lowe Bros. (S)	Marlow, Okla	do	2	45,400	34	30½	17.02	5.66
McAdams, W. J. (S)	Coroma, N. Mex	do	1	25,000	43	39	10.00	3.16
McCament, A. S. (S)	do	do	5	117,300	43	39	46.92	14.91
McDonald, T.	Ryan, Okla	do	3	67,300	36	32	26.92	8.71
McFarland Bros. (S)	Logan, N. Mex	do	2	44,000	34½	31½	13.20	4.17
Major, L. D. (S)	Ryan, Okla	do	26	629,900	36	32	251.96	83.22
Manton, A. R. (S)	do	do	32	718,800	36	32	287.52	104.86
Marcum, B. (S)	Rush Springs, Okla	do	2	49,100	33½	30½	14.73	5.96
Martin, J. D. M. (S)	Comanche, Okla	do	4	90,800	34	30½	29.51	9.73
Martin, J. W. (C)	do	do	3	73,200	34	30½	23.79	7.73

Matador Land & Cattle Co. (S)	Estelline, Tex	St. Joseph, Mo	11	243,000	34½	31½	$72.90	
Do	do	Kansas City, Kans	39	859,700	34½	31½	257.91	
Do	Murdo, Tex	do	10	229,000	34½	31½	68.70	
186			60	1,331,700			399.51	$149.29
Matthews, G. M.	Duncan, Okla	do	2	44,000	34	30½	14.30	4.73
May, W. H. (S)	Rush Springs, Okla	do	4	88,000	33½	30½	26.40	10.48
Mays, C. M	Erick, Okla	do	2	44,000	31	28	13.20	4.14
Melton & Spivey. (S)	Bellevue, Tex	do	35	770,000	42½	39½	231.00	91.01
Miller, J. M. (C)	Mount View, Okla	do	3	70,400	33½	30½	21.12	6.73
Montague, Jay	Mineo, Okla	do	6	132,300	31½	28½	39.69	13.00
Moody, P. (C)	Weatherford, Okla	do	1	23,400	31	28	7.02	2.79
Moore, J. H	Comanche, Okla	do	2	46,600	41½	38	15.14	6.49
Moore & Williams	Dalhart, Tex	do	2	46,600	34½	31½	13.98	5.25
			84	1,913,300	34½	31½	500.85	
Moreman, J. W. (S)	do	St. Joseph, Mo	4	89,100	34½	31½	26.73	
Do	Middlewater, Tex	do	88	2,002,400			527.58	204.63
Morris, R. A.	Texline, Tex	Kansas City, Kans	5	111,300	34½	31½	33.39	14.41
North Tex. L.S. Com. Co.	Chickasha, Okla	do	2	44,000	32½	29	15.40	6.27
Orton, O. G. (S)	Ryan, Okla	do	29	657,500	36	32	263.00	86.57
Paden, H. R. (S)	Geary, Okla	do	10	231,300	31	28	69.39	27.12
Paden & Smith. (S)	do	do	7	156,600	31	28	46.98	18.85
Peery & Saera. (S)	Addington, Okla	St. Joseph, Mo	5	119,800	34	30½	38.93	12.98
			21	677,000	32½	29	236.95	
Peery, Tom. (S)	Chickasha, Okla	Kansas City, Kans	5	116,200	33½	30½	34.86	
Do	Rush Springs, Okla	do	3	72,300	34	30½	23.50	
Do	Addington, Okla	do	37	865,500			295.37	115.20
Phillips, H. L. (S)	Rush Springs, Okla	do	2	44,000	33½	30½	13.20	4.18
Poole, A	Chickasha, Okla	do	3	66,100	32½	29	23.14	9.02
Porter & Spivey. (S)	Addington, Okla	do	8	177,900	34	30½	57.82	19.04
Price, J. S. & Henry. (S)	do	do	27	631,700	34	30½	205.30	74.28

CLAIMS AGAINST CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Price & Keith. (S)	Addington, Okla	Kansas City, Kans	9	219,500	34	30½	$71.33	$27.19
Pursley, W. M. (S)	Rush Springs, Okla	do	3	66,000	33½	30½	19.80	7.03
Rattan & Murray. (S)	Mangum, Okla	do	1	22,000	34½	31½	6.60	2.16
			4	88,000	36½	33	30.80	
Red River Valley Co. (S)	Baseonf, N. Mex	do	6	135,200	38	33	67.60	
Do	Tucumcari, N. Mex	do	6	132,000	38	33	66.00	
Do	do	St. Joseph, Mo						
			16	352,000			164 40	59.51
187								
Ridley, R. C. (S)	Marlow, Okla	Kansas City, Kans	8	192,600	34	30½	62.59	
Do	do	St. Joseph, Mo	18	415,700	34	30½	135.10	
Do	do	do	2	47,600	34½	30½	17.85	
Do	Rush Springs, Okla	do	2	44,400	33⅓	30½	13.22	
			28	700,300			228.86	91.42
Rude & Pigg. (S)	Mangum, Okla	Kansas City, Kans	27	612,000	34½	31½	183.60	72.29
Russell & Hubbard. (S)	Comanche, Okla	St. Joseph, Mo	3	66,000	34	30½	21.45	
Do	do	Kansas City, Kans	2	46,200	34	30½	15.01	
			5	112,200			36.46	14.20
Russell & Rose. (S)	Ryan, Okla	St. Joseph, Mo	4	93,200	36	32	37.28	16.35
Ryan, S. W. (C)	do	Kansas City, Kans	12	285,500	36	32	114.80	42.81
Ryan, Tom. (S)	do	do	4	88,000	36	32	35.20	13.58

Sacra, J. B. (S)	Anadarko, Okla	do	1	23,200	33	29½	8.12		
Do	Chickasha, Okla	do	7	166,900	32½	29	58.41		
Do	Ninnekah, Okla	do	1	28,400	33	29½	9.94		
Do	Rush Springs, Okla	do	1	22,000	33½	30½	6.60		
			10	240,500			83.07	28.95	
Sacra & Smith (S)	Addington, Okla	do	5	110,000	34	30½	35.75	11.64	
Scannell & Patterson (S)	Elk City, Okla	do	7	158,400	31	28	47.52	20.27	
Seay Bros. (C)	Ryan, Okla	do	16	359,700	36	32	143.88	49.92	
Seitter & Pinney (S)	Geary, Okla	do	10	224,600	31	28	67.38	27.85	
Stine, J. H. (S)	Rush Springs, Okla	do	36	816,200	33½	30½	238.86		
Do	Chickasha, Okla	do	21	478,800	32½	29	167.58		
			57	1,295,000			406.44	147.11	
Simpson, J. H. (S)	Mangum, Okla	do	6	132,000	34½	31½	39.60	16.35	
Slade, E. P. (S)	Minco, Okla	St. Joseph, Mo	3	67,500	31½	28½	20.25	8.93	
Slaton, J. A. (S)	Tush Springs, Okla	Kansas City, Kans	2	46,700	33½	30½	14.01	4.58	
Smith, B. P. (S)	Minco, Okla	St. Joseph, Mo	8	185,800	31½	28½	55.74	24.37	
Smith, C. R. (S)	Marlow, Okla	Kansas City, Kans	5	112,100	34	30½	36.43	14.86	
Smith & Sacra (S)	Addington, Okla	do	5	114,900	34	30½	37.34	12.14	
Sparks-Peery & Sacra (S)	Chickasha, Okla	do	20	440,400	32½	29	154.14	59.49	
Spring, A. A., & Son (S)	Ryan, Okla	do	11	266,400	36	32	106.56		
Do	Sugden, Okla	do	10	235,200	35½	30½	176.40		
			21	501,600			282.96	107.89	
Stephens, D. H. (S)	Ninnekah, Okla	Kansas City, Kans	4	92,800	33	29½	32.48	30.15	
Swift, Edw. F. (S)	Falhart, Tex	do	21	484,600	34½	31½	145.38		
Do	Romero, Tex	South St. Joseph, Mo	27	611,300			183.39		
			48	1,095,900			328.77	125.52	
'88									
Thomas, A. V	Ninnekah, Okla	Kansas City, Kans	3	69,200	33	29½	24.22	10.10	
Thomas, G. W. (S)	do	do	6	137,400	33	29½	48.09	19.84	

CLAIMS AGAINST CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin	Destination	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
True, E. C. (8)	Ryan, Okla	do	8	182,300	36	32	$72.92	$25.81
True, J. R. (8)	Comanche, Okla	do	11	242,000	34	30¼	78.65	
Do	Ryan, Okla	do	42	942,500	36	32	377.00	
			53	1,184,500			455.65	188.80
Tyler, J. W	Hobart, Okla	do	4	92,300	34½	31	32.30	13.13
Ventioner, J. D	Chico, Tex	do	2	48,800	36¼	33½	14.64	4.82
Washington & Davidson (8)	Addington, Okla	do	4	90,200	34	30¼	29.31	
Do	do	St. Joseph, Mo	10	222,200	34	30¼	72.21	
			14	312,400			101.52	44.06
Waters Bros	Sayre, Okla	Kansas City, Kans	1	22,000	31	28	6.60	2.12
Webb, Sidney (8)	Addington, Okla	do	32	724,500	34	30¼	235.46	70.98
White, George W	Pocassett, Okla	do	3	69,000	32	29	20.88	7.01
White, J. M. (8)	Addington, Okla	do	4	102,100	34	30¼	33.18	10.86
Williams, J. L	Sayre, Okla	do	1	24,800	31	28	7.44	3.77
Wilson, Horace. (8)	Ryan, Okla	do	4	88,000	36	32	35.20	
Do	do	St. Joseph, Mo	2	44,000	36	32	17.60	
			6	132,000			52.80	17.15
Witherspoon, A. H. (8)	Mineo, Okla	Kansas City, Kans	7	163,100	31½	28½	48.93	
Do	do	St. Joseph, Mo	1	25,300			7.59	
			8	188,400			56.52	18.87
Young, T. M	Ryan, Okla	Kansas City, Kans	3	68,300	36	32	27.32	8.67

CLAIMS AGAINST ILLINOIS CENTRAL RAILROAD COMPANY, THE DELIVERING LINE IN EACH SHIPMENT.

Blocker, J. R. (8)	Eagle Pass, Tex	National Stock Yards, Ill	6	132,000	51½	48½	$39.60	
Do	Cline, Tex	do	2	46,000	51½	48½	13.80	
			8	178,000			53.40	$17.80
189								
Chittim, J. M. (8)	Paloma, Tex	Chicago, Ill	15	330,000	62½	59½	99.00	32.95
Ford, W. H. (8)	Eagle Pass, Tex	National Stock Yards, Ill	12	264,000	51½	48½	79.20	26.43
Jennings & Courtney. (8)	Standart, Tex	do	16	356,400	51½	48½	105.60	35.48
Mangum, H. L. (8)	Uvalde, Tex	Chicago, Ill	6	137,900	62½	59½	41.37	
Do	do	National Stock Yards, Ill	6	132,900	51½	48½	39.87	
			12	270,800			81.24	27.08
Mitchell, A. E. (8)	do	do	3	70,300	51½	48½	21.15	7.09
Mitchell & Johnson. (8)	do	do	19	418,000	51½	48½	125.40	42.04
Pryor, I. T. (8)	do	Chicago, Ill	11	244,130	62½	59½	73.23	24.36
			16	352,000	61½	58½	105.60	
Sotham, T.F.B.Co. (8)	Odessa, Tex	Kankakee, Ill	58	1,276,000	66½	63½	382.80	
Do	Monohans, Tex	Chicago Territory	29	638,000	59½	56½	191.40	
Do	Big Springs, Tex	do	4	88,000	59½	56½	26.40	
Do	Stanton, Tex	do	11	242,000	59½	56½	72.60	
Do	Midland, Tex	do	118	2,596,000			778.80	338.80
Storey, H. C. (8)	Uvalde, Tex	Chicago, Ill	10	245,200	62½	59½	73.56	24.48
Wigglesworth, Ed. (8)	do	National Stock Yards, Ill	7	154,500	51½	48½	46.35	15.52

CLAIMS AGAINST MISSOURI PACIFIC RAILWAY COMPANY, THE DELIVERING LINE IN EACH SHIPMENT.

Ashton, Sam	Purcell, Okla	National Stock Yards, Ill	2	48,000	40	36	$19.20	$6.39
Carlile, R. B. (8)	Illinois, Okla	Kansas City, Kans	5	113,400	22	21	11.34	

CLAIMS AGAINST MISSOURI PACIFIC RAILWAY COMPANY,
THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents*	*Cents.*		
Carlile, R. B. (8)	Vian, Okla	Kansas City, Kans	1	22,000	22	21	$2 20	
			6	135,400			13 54	$4 40
Cookson, E. L.	Bragge, Okla	do	13	339,500	22	21	33.95	13.59
Crawford, James. (8)	Purcell, Okla	National Stock Yards, Ill	2	48,000	40	36	19.20	6.40
Garvin, B. F.	Hanson, Okla	Kansas City, Kans	8	187,800	22	21	18.78	6 24
Livingston Bros. (8)	Wagoner, Okla	National Stock Yards, Ill	2	47,700	30½	28½	11.92	3 88
Moore, J. D., & Son. (8)	Kiowa, Okla	do	22	484,000	39	37½	72.60	33.36
Peary, Joe	Purcell, Okla	do	3	76,200	40	36	30.48	10.15
Saera, R. C., & Son. (8	do	do	3	70,000	40	36	28.00	9.33
White Bros. (8)	do	do	5	114,000	40	36	45.60	15.19

CLAIMS AGAINST MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,
THE DELIVERING LINE IN EACH SHIPMENT.

Adams & Newell. (8)	Royse, Tex	National Stock Yards, Ill	2	44,000	42½	39½	$13 20	$1 42
Adcock, Jas. (8)	Checotah, Okla	Kansas City, Kans	5	110,000	23½	22½	11.00	3.54
Ahern, Robert. (8)	Fort Worth, Tex	National Stock Yards, Ill	12	264,000	42½	39½	79.20	31.89
Aikins, J. H	Midland, Tex	Kansas City, Kans	5	110,000	44	41	33.00	
Do	Odessa, Tex	do	2	44,000	45½	42½	13 20	
Do	Fort Worth, Tex	National Stock Yards, Ill	43	946,000	42½	39½	283.80	
Do	Stanton, Tex	do	3	66,000	49	46	19.80	
Do	Marfa, Tex	do	2	44,000	63½	60½	13.20	
Do	Monohans, Tex	do	4	88,000	56½	53½	26.40	
Do	Midland, Tex	do	2	44,000	50	47	13.20	
Do	Odessa, Tex	do	3	66,000	51½	48½	19.80	
190			64	1,408,000			422.40	132.99

Aikins, J. V. (S)	Waco, Tex	do	12	264,000	44½	41½	79.20		
Do	Uvalde, Tex	do	14	308,000	51½	48½	92.40		
Do	Kent, Tex	Kansas City, Kans	13	286,000	55½	52½	85.80		
			39	858,000			257.40	87.61	
Allen, J. L. (S)	Waco, Tex	National Stock Yards, Ill	3	66,000	44½	41½	19.80	8.24	
Allen, W. T. (S)	do	do	3	66,000	44½	41½	19.80	8.24	
Alley Bros. & Co	Muskogee, Okla	Kansas City, Kans	2	44,000	22½	21	6.60	3.39	
Allison, J. W. (S)	Ennis, Tex	National Stock Yards, Ill	40	880,000	42½	39½	264.00	104.90	
Alverson & Sparks. (S)	Quanah, Tex	Kansas City, Kans	5	110,000	36½	33½	33.00	10.44	
Alvord, Frank	Baird, Tex	National Stock Yards, Ill	2	44,000	45½	42½	13.20	4.16	
Anderson, J. P. (S)	Midlothian, Tex	do	10	220,000	42½	39½	66.00	27.15	
Arnett & Dupree. (S)	Colorado, Tex	Kansas City, Kans	2	44,000	42	39	13.20	4.58	
Arnett, W. H. (S)	Calvert, Tex	National Stock Yards, Ill	6	132,000	48½	45½	39.60	16.23	
Attoway, W. H. (S)	Caddo, Okla	do	7	154,000	41½	38	53.90	19.65	
Aycock & White	do	Kansas City, Kans	1	22,000	35	31	8.80	2.76	
Baker & Stewart. (S)	Holly, Tex	National Stock Yards, Ill	7	154,000	42½	39½	46.20		
Do	Hodge, Tex	do	4	88,000	42½	39½	26.40		
Do	Jolly, Tex	Kansas City, Kans	2	44,000	36½	33½	13.20		
Do	Moran, Tex	do	2	44,000	40½	37½	13.20		
			15	330,000			99.00	43.01	
Baldridge, L. L. (S)	Checotah, Okla	National Stock Yards, Ill	12	264,000	32	30½	39.60	16.44	
Ball, Geo. E. N. (S)	Myra, Tex	Kansas City, Kans	16	352,000	36½	33½	105.60	34.57	
191 Barringer, J. L. (S)	Ada, Okla	National Stock Yards, Ill	3	66,000	40	37½	16.50	5.54	
Barron & Parker	Sweetwater, Tex	do	2	44,000	48	45	13.20	4.42	
Batte, R. L. (S)	Cameron, Tex	do	17	374,000	48½	45½	112.20	45.57	
Battles, G. W	Kiowa, Okla	do	3	66,000	39	37½	9.90	3.82	
Bell, Ed	Sabinal, Tex	do	2	44,000	51½	48½	13.20	4.47	
Benbow, J. D. (S)	Yoakum, Tex	do	2	44,000	51½	48½	13.20	4.41	
Benton, W. F. (C)	Belcher, Tex	do	5	110,000	36½	33½	33.00	13.97	
Berliner & Thompson. (S)	Fort Worth, Tex	do	73	1,606,000	42½	39½	481.80		
Do	Midland, Tex	do	2	44,000	50	47	13.20		

CLAIMS AGAINST MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,
THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents*	*Cents.*		
Berliner & Thompson. (S)	Stanton, Tex	National Stock Yards, Ill	3	66,000	49	46	$ 19.80	
191			78	1,716,000	.....	.....	514.80	$157 35
Berry, J. E. (S)	Pearsall, Tex	....do	5	110,000	51½	48½	33.00	13.22
Bevans & Cooper. (S)	San Antonio, Tex	....do	9	198,000	51½	48½	59.40	23.56
Biffle, J. E. (C)	Nocona, Tex	....do	1	22,000	42½	39½	6.60	2.18
Biffle, J. T. (S)	Myra, Tex	....do	9	198,000	36½	31½	59.40	19.65
Birdwell & Tankersley, (S)	Summitt, Okla	Kansas City, Kans	6	132,000	22½	21	19.80	8.57
Black, Gus. (S)	Spofford, Tex	National Stock Yards, Ill	2	44,000	51½	48½	13.20	4.34
Blackaller Bros. (S)	Pearsall, Tex	....do	10	220,000	51½	48½	66.00	26.14
Blackburn & Whitener, (C)	Burton, Tex	....do	2	44,000	50½	47½	13.20	4.42
Blackwell & Burns. (S)	Yoakum, Tex	....do	5	110,000	51½	48½	33.00	14.45
Blalock & Mangum. (S)	Dilley, Tex	....do	9	198,000	51½	48½	59.40	
Do	Uvalde, Tex	....do	7	154,000	51½	48½	46.20	
			16	352,000	.....	.....	105.60	44.33
Blocker & Berry. (S)	Cotulla, Tex	....do	2	44,000	51½	48½	13.20	5.18
Blocker & Ford. (S)	Encinal, Tex	....do	11	242,000	51½	48½	72.60	25.48
Blocker, J. R. (S)	....do	....do	12	264,000	51½	48½	79.20	
Do	Del Rio, Tex	....do	1	22,000	51½	48½	6.60	
Do	Cotulla, Tex	....do	1	22,000	51½	48½	6.60	36.72
			14	308,000	.....	.....	92.40	
Bobbitt, A. A., est. (S)	Ada, Okla	....do	7	154,000	40½	37½	46.20	20.45
Body, H. D. (S)	Henrietta, Tex	....do	2	44,000	42½	39½	13.20	4 42
Boedeker & Ball	Bowie, Tex	....do	3	66,000	42½	39½	19.80	8.07

Comar, E. P. (S)	Quanah, Tex	Kansas City, Kans	7	154,000	36½	33½	$ 46.20	
Do	Farmer, Tex	National Stock Yards, Ill	11	242,000	36½	33½	72.60	
			18	396,000			118.80	$ 41.29
Borden, A. P. (S)	Pierce, Tex	....do	9	198,000	51½	48½	59.40	20.86
Borden, Guy	San Antonio, Tex	....do	1	22,000	51½	48½	6.60	2.20
Bounds, J. V. (S)	Wortham, Tex	Kansas City, Kans	2	44,000	38½	35½	13.20	4.36
Bounds, T. A. & E. S. (C)	Kiowa, Okla	Kansas City, Kans	34	748,000	31	29½	112.20	
Do	....do	National Stock Yards, Ill	10	220,000	39	37½	33.00	
Do	Wortham, Tex	Kansas City, Kans	20	440,000	38½	35½	132.00	
			64	1,408,000			277.20	97.30
192								
Bourland, W. M. & Bro. (S)	Giles, Tex	....do	7	154,000	36½	33½	46.20	17.24
Bourland-Barefoot, L. S. Com. Co. (S)	Fort Worth, Tex	....do	2	44,000	36½	33½	13.20	5.78
Branch, C. (S)	Edna, Tex	....do	5	110,000	51½	48½	33.00	
Do	....do	National Stock Yards, Ill	3	66,000	51½	48½	19.80	
			8	178,000			52.80	20.95
Branch, C. & E. (S)	....do	Kansas City, Kans	6	132,000	51½	48½	39.60	13.10
Browder, J. M. (S)	Memphis, Tex	....do	1	22,000	36½	33½	6.60	
Do	Giles, Tex	....do	13	286,000	36½	33½	85.80	
			14	308,000			92.40	39.93
Brown, B. (S)	Uvalde, Tex	National Stock Yards, Ill	4	88,000	51½	48½	26.40	11.14
Brown, R. J. (S)	Henrietta, Tex	....do	26	572,000	36½	33½	171.60	64.10
Browning, D. K. (S)	Itasca, Tex	....do	11	242,000	44½	41½	72.60	29.70
Brownwood Oil Mill Co. (S)	....do	....do	49	107,800	45½	42½	323.40	128.23
Bryant, Wm. (S)	Grand Prairie, Tex	....do	15	33,000	42½	39½	99.00	39.23

CLAIMS AGAINST MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, THF DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Buckley T. J. (S)	Summitt, Okla	Kansas City, Kans	6	132,000	22½	21	$19 80	
Do	Encinal, Tex	do	11	242,000	51½	38½	72 60	
Do	Cameron, Tex	do	5	110,000	42½	39½	33 00	
			22	484,000			125 40	$45 05
Buehrig, Wm. (S)	Cuero, Tex	National Stock Yards, Ill	6	132,000	51½	48½	39 60	17 32
Burch, A. M. (S)	Whitesboro, Tex	Kansas City, Kans	8	176,000	36½	33½	52 80	21 89
Burns, Hugh. (C)	Millett, Tex	National Stock Yards, Ill	6	132,000	51½	48½	39 60	16 51
Burr, J. K. (S)	Paloma, Tex	do	16	352,000	51½	48½	105 60	42 87
Busby & Miller. (S)	Ennis, Tex	do	9	198,000	42½	39½	59 40	24 36
Bustin, J. F. (S)	Midland, Tex	Kansas City, Kans	11	242,000	44	41	72 60	30 98
Butts, H. W	Hondo, Tex	National Stock Yards, Ill	6	132,000	51½	48½	39 60	13 48
Byers Bros. (S)	Byers, Tex	do	42	924,000	42½	39½	277 20	
Do	do	Kansas City, Kans	5	110,000	36½	33½	33 00	
			47	1,034,000			310 20	133 91
193								
Camp, A. L. (S)	Odessa, Tex	do	3	66,000	45½	42½	19 80	7 23
Cantrell & Moore. (S)	Italy, Tex	National Stock Yards, Ill	6	132,000	44½	41½	39 60	16 15
Carrow, R. (S)	Whitesboro, Tex	do	4	88,000	42½	39½	26 40	
Do	Henrietta, Tex	do	1	22,000	42½	39½	6 60	
Do	do	Kansas City, Kans	1	22,000	42½	39½	6 60	
			6	132 000			39 60	15 16

Cauble, S. I. & F. L. (S)	Toyah, Tex	do	2	44,000	55½	52½	13.20	
Do	Big Springs, Tex	do	3	66,000	43	40	19.80	
			5	110,000			33.00	16.45
Chesser, W. T. (S)	Van Horn, Tex	do	1	22,000	55½	52½	6.60	
Do	Toyah, Tex	do	3	66,000	55½	52½	19.80	
Do	Fort Worth, Tex	National Stock Yards, Ill	2	44,000	42½	39½	13.20	
			6	132,000			39.60	
Chittim, J. M. (S)	Eagle Pass, Tex	do	6	132,000	51½	48½	39.60	
Do	Paloma, Tex	do	15	330,000	51½	48½	99.00	
Do	Spofford, Tex	do	26	572,000	51½	48½	171.60	
			47	1,034,000			310.20	106.30
Citizens Bank, Carnegie, Okla. (S)	Midland, Tex	do	10	220,000	50	47	66.00	21.97
Clark, P. R. (S)	San Angelo, Tex	do	11	242,000	49	46	72.60	22.49
Clausell & Ivy. (S)	Albany, Tex	do	8	176,000	45½	42½	52.80	17.17
Clisbee Bros. (S)	Quanah, Tex	Kansas City, Kans	4	88,000	36½	33½	26.40	11.22
Cobb, S. Y. (S)	Vinita, Okla	National Stock Yards, Ill	9	198,000	25¾	25¼	9.90	3.91
Coffee, E. E.	Quanah, Tex	Kansas City, Kans	4	88,000	36½	33½	26.40	8.63
Coggin, W. A. (S)	Merkel, Tex	National Stock Yards, Ill	1	22,000	41½	38½	6.60	2.86
Colbert, C. H	Lehigh, Okla	do	2	44,000	39	38	4.40	1.94
Colbert & Nail	Eufaula, Okla	do	27	594,000	36	32½	207.90	86.08
Colbert, Oscar. (S)	Kiowa, Okla	do	22	484,000	39	37½	72.60	
Do	do	Kansas City, Kans	3	66,000	31	29½	9.90	
			25	550,000			82.50	34.29
Cole, O. M	Luther, Okla	National Stock Yards, Ill	5	110,000	30	28	22.00	9.00
Coleman Cotton Oil Co. (S)	Coleman, Tex	do	73	1,606,000	46½	43½	481.80	192.24
Coleman & Co. (S)	Encinal, Tex	do	3	66,000	51½	48½	19.80	7.84
Coleman & Garcia. (S)	do	do	16	352,000	51½	48½	105.60	42.67

CLAIMS AGAINST MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Coleman, T. A. (S)	Encinal, Tex	National Stock Yards, Ill	67	1,474,000	51½	48½	$442.20	
Do	Eagle Pass, Tex	do	18	396,000	51½	48½	118.80	
Do	Artesia, Tex	do	2	44,000	51½	48½	13.20	
Do	Millett, Tex	do	6	132,000	51½	48½	39.60	
Do	Falls City, Tex	do	2	44,000	51½	48½	13.20	
194			95	2,090,000			627.00	$239.30
Colle, F. (S)	Yoakum, Tex	do	11	242,000	51½	48½	72.60	24.18
Conrad Bros. (S)	Albany, Tex	do	4	88,000	45½	42½	26.40	8.67
Cook-Hereford Cattle Co. (S)	Pearsall, Tex	do	2	44,000	51½	48½	13.20	5.20
Cook, S. H	Granbury, Tex	do	4	88,000	38½	35½	26.40	8.72
Corn & Sou. (S)	Chandler, Okla	do	2	44,000	39	36	13.20	
Do	Hodge, Tex	do	28	616,000	42½	39½	184.80	
Do	Waxahachie, Tex	do	5	110,000	42½	39½	33.00	
Do	Kiowa, Okla	do	8	176,000	39	37½	26.40	
Do	Wagoner, Okla	do	37	814,000	30½	28½	203.50	
Do	Alvarado, Tex	Kansas City, Kans	4	88,000	36½	33½	26.40	
Do	Hodge, Tex	do	5	110,000	36½	33½	33.00	
Do	Wagoner, Okla	do	6	132,000	22	20	26.40	
Do	Waxahachie, Tex	do	10	220,000	36½	33½	66.00	
			105	1,650,000			612.70	249.79
Coughran Bros. (S)	Floresville, Tex	National Stock Yards, Ill	26	572,000	51½	48½	171.60	67.37
Cassidy, Courtney & Doerr. (S)	Beeville, Tex	do	2	44,000	51½	51	2.20	
Do	Uvalde, Tex	do	15	330,000	51½	48½	99.00	

Do	Standart, Tex	do	20	440,000	51½	48½	132.00	
			37	814,000			233.20	76.99
Cowden, G. F. (S)	Midland, Tex	do	2	44,000	50	47	13.20	4.84
Cowden & Jowell. (S)	Mazie, Okla	Kansas City, Kans	5	110,000	19½	19	5.50	
Do	Odessa, Tex	do	1	22,000	45½	42½	6.60	
			6	132,000			12.10	3.87
Crabtree, J. C. (S)	Eufaula, Okla	National StockYards, Ill	10	220,000	36	32½	77.00	25.47
Crenshaw, Lee. (S)	Belcher, Tex	do	47	1,034,000	42½	39½	310.20	
Do	Whitesboro, Tex	Kansas City, Kans	5	110,000	36½	33½	33.00	
Do	do	National StockYards, Ill	6	132,000	42½	39½	39.60	
Do	Nacona, Tex	do	2	44,000	42½	39½	13.20	
195			60	1,320,000			396.00	149.73
Crosby, E. F. (S)	Kiowa, Okla	Kansas City, Kans	13	286,000	31	29½	42.90	
Do	do	National Stock Yards, Ill	33	726,000	39	37½	108.90	
			46	1,012,000			151.80	57.26
Curtis, A. G., & Bros. (S)	Odessa, Tex	Kansas City, Kans	5	110,000	45½	12½	33.00	14.23
Dale Land & Cattle Co. (S)	Jolly, Tex	National Stock Yards, Ill	10	220,000	42½	39½	66.00	13.04
Darst, R. H. (S)	Rosenberg, Tex	do	1	22,000	51½	48½	6.60	2.18
Davis Bros. (T. E. and F. C.) (S)	Kiowa, Okla	do	6	132,000	39	37½	19.80	
Do	Ada, Okla	do	51	1,122,000	40½	37½	336.60	
Do	Tuskahoma, Okla	do	3	66,000	39	35	26.40	
Do	Stringtown, Okla	do	18	396,000	39	38	39.60	
Do	Shawnee, Okla	do	20	440,000	39	36	132.00	
			98	2,354,000			554.40	229.80

CLAIMS AGAINST MISSOURI, KANSAS & TEXAS RAILWAY COMPANY.
THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Davis, T. E. (S)	Ada, Okla	do	39	858,000	40½	37½	257 40	
Davis, T.E. (F.C. Davis, admr.)	Shawnee, Okla	do	29	638,000	39	36	191 40	
			68	1,496,000			448.80	185.20
Davis & Jennings. (S)	Beeville, Tex	do	17	374,000	51½	51	18.70	7.23
Davis, J. P. (S)	Rosenberg, Tex	do	2	44,000	51½	48½	13.20	4.35
Davis, M.	Seymour, Tex	do	23	506,000	44½	41½	151.80	49.46
Davis & Polk	Eakota, Okla	do	8	176,000	48	45	52.80	23.13
D. O. K. Land & Cattle Co. (S)	Flora, Okla	do	16	352.000	39	38	35.20	
Do	Atoka, Okla	do	5	110,000	39	38	11.00	
Do	Chockie, Okla	do	20	440,000	39	38	44.00	
Do	Leonard, Tex	do	17	374,000	42½	39½	112.20	
			58	1,276,000			202.40	71 14
Dubose, J. L. (S)	Cuero, Tex	do	7	154,000	51½	48½	46.20	15.50
Duderstadt, Phil	do	do	2	44,000	51½	48½	13.20	4.47
Dulaney, O. L. (C)	Atoka, Okla	do	2	44,000	39	38	4.40	1.88
Dumas, J. D. (S)	Caddo, Okla	do	21	462,000	41	38	161.70	
Do	do	Kansas City, Kans	1	22,000	35	31	8.80	
			22	484,000			170.50	56.70
Dupree, Ed.& Geo.L. (S)	Colorado, Tex	Kansas City, Kans	11	242,000	42	39	$72.60	
Do	Coalgate, Okla	National Stock Yards, Ill	7	154,000	39	38	15.40	

Do	....do	Kansas City, Kans	5	110,000	31	30½	2.75	
196			23	506,000			90.75	$33.40
Dupree & McAfee. (S)	Colorado, Tex	....do	2	44,000	42	39	13.20	4.49
Dyer & Lee. (S)	Durant, Okla	National Stock Yards, Ill	4	88,000	41½	39	22.00	7.08
Earnest, J. D. (S)	Stanton, Tex	Kansas City, Kans	16	352,000	43	40	105.60	
Do	Big Springs, Tex	....do	2	44,000	43	40	13.20	
			18	396,000			118.80	39.48
Earnest & Wilson. (S)	....do	....do	38	836,000	43	40	250.80	93.47
East & White. (S)	Fort Worth, Tex	National Stock Yards, Ill	39	858,000	42½	39½	257.40	97.46
Edrington & Myers. (S)	Jolly, Tex	....do	2	44,000	42½	39½	13.20	4.42
Edwards, A. B. (S)	Henrietta, Tex	....do	6	132,000	42½	39½	39.60	13.21
Edwards Bros. (S)	....do	....do	8	176,000	42½	39½	52.80	
Do	Wagoner, Okla	....do	5	110,000	30¾	28½	27.50	
			13	286,000			80.30	31.32
Edwards, W. P.	Fort Worth, Tex	....do	3	66,000	42½	39½	19.80	8.72
Ellison, T. H. (S)	El Reno, Okla	Kansas City, Kans	8	176,000	31	28	52.80	21.41
Embry, Talton. (S)	Aledo, Tex	....do	7	154,000	36½	33½	46.20	
Do	....do	National Stock Yards, Ill	5	110,000	42½	39½	33.00	
			12	264,000			79.20	28.68
Erkle & White. (S)	Flora, Okla	....do	73	1,606,000	39	38	160.60	
Do	....do	Kansas City, Kans	8	176,000	31	30¾	4.40	
			81	1,782,000			165.00	53.50
Etter, R. P. (S)	Lone Oak, Tex	National Stock Yards, Ill	20	440,000	42½	39½	132.00	53.00
Evans Bros. (S)	Mazie, Okla	....do	3	66,000	28¾	27½	4.95	2.17
Evans, Geo. W.	Kent, Tex	....do	9	193,000	63½	60½	59.40	25.63
Evans-Montague Co.	Austin, Tex	....do	7	154,000	50½	47½	46.20	18.19

CLAIMS AGAINST MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Farris, Jno. N. (S)	Clarendon, Tex	Kansas City, Kans	4	88,000	36½	33½	$ 26 40	$ 9 80
Fenley, J. C. & G. B. (S)	Cline, Tex	National Stock Yards, Ill	12	264,000	51½	48½	79 26	26 88
Ferguson, Britton & Van Eaton. (C)	Clarendon, Tex	Kansas City, Kans	3	66,000	36½	33½	19 80	8 54
Fields & Son. (S)	Midland, Tex	National Stock Yards, Ill	8	176,000	50	47	52 80	17 40
Fish, C. M. (S)	Stanton, Tex	Kansas City, Kans	5	110,000	43	40	33 00	12 69
Fletcher, Lo	Abilene, Tex	National Stock Yards, Ill	9	198,000	46½	43½	59 40	24 51
Flowers, E. B. (C)	Uvalde, Tex	do	5	110,000	51½	48½	33 00	13 78
Fontaine, W. S. (S)	Sulphur Springs, Tex	do	9	198,000	42½	39½	59 40	23 85
Ford, W. H. (S)	Comstock, Tex	do	4	88,000	51½	48½	26 40	8 90
Fowler & Anderson. (S)	Georgetown, Tex	do	5	110,000	50½	47½	33 00	13 55
Fowler, D. D. (S)	Calvert, Tex	do	4	88,000	48½	45½	26 40	10 85
French, W. A (S)	Kaufman, Tex	do	3	66,000	42½	39½	19 80	7 87
Furneaux Bros. (S)	Kiowa, Okla	Kansas City, Kans	7	154,000	31	24½	23 10	
Do	Denton, Tex	National Stock Yards, Ill	13	286,000	42½	39½	85 80	
Do	Midlothian, Tex	do	11	242,000	42½	39½	72 60	
Do	do	Kansas City, Kans	25	550,000	36½	33½	165 00	
			56	1,232,000			346 50	134 50
197								
Furnish Bros. (S)	Spofford, Tex	National Stock Yards, Ill	9	198,000	51½	48½	59 40	20 06
Gage, A. S. (S)	Haymond, Tex	do	18	396,000	55	52	118 80	50 10
Gardner, D. B. (S)	Childress, Tex	do	6	132,000	42½	39½	39 60	17 33
Garrett & Goldsmith. (C)	Odessa, Tex	Kansas City, Kans	20	440,000	45½	42½	132 00	
Do	Midland, Tex	National Stock Yards, Ill	3	66,000	50	47	19 80	
Do	Odessa, Tex	do	2	44,000	51½	48½	13 20	
			25	550,000			165 00	54 70

Gibbs, W. H	Seymour, Tex	do	10	220,000	44½	41½	66.00	27.06
Gibson & Edwards Bros. (S)	Wagoner, Okla	Kansas City, Kans	11	242,000	22	20	48.40	
Do	Mazie, Okla	National Stock Yards, Ill	17	374,000	28¼	27½	28.05	
			28	616,000			76.45	30.04
Gibson, J. W. (S)	do	do	10	220,000	28¼	27½	16.50	5.42
Gibson & Parkinson. (S)	do	do	8	176,000	28¼	27½	13.20	5.80
Gibson, P. C. (S)	Calvert, Tex	do	27	594,000	48½	45½	178.20	73.21
Gill & Co	Coalgate, Okla	do	7	154,000	39	38	15.40	6.66
Glenn, E. D. (S)	Pilot Point, Tex	Kansas City, Kans	8	176,000	36¼	33½	52.80	21.99
Gober, Gus. (S)	Quanah, Tex	do	4	88,000	36½	33½	26.40	8.83
Godair & Baldridge. (S)	Wagoner, Okla	do	3	66,000	22	20	13.20	
Do	Mazie, Okla	do	2	44,000	19½	19	2.20	
Do	do	National Stock Yards, Ill	39	858,000	28½	27½	64.35	
Do	Wagoner, Okla	do	3	66,000	30¾	28¼	16.50	
			47	1,034,000			96.25	31
Good, Ed C. (S)	Monohans, Tex	do	3	66,000	56½	53½	19.80	
Do	do	Kansas City, Kans	2	44,000	50½	47½	13.20	
			5	110,000			33.00	13.83
Graham, J. M. (S)	Comstock, Tex	Kansas City, Kans	9	198,000	51½	48½	59.40	20.04
Graham & Price. (S)	Monohans, Tex	do	19	418,000	50½	47½	125.40	
Do	Odessa, Tex	do	17	374,000	45½	42½	112.20	
Do	Monohans, Tex	National Stock Yards, Ill	10	220,000	56½	53½	66.00	
198			46	1,012,000			303.60	121.79
Gray Bros. (S	Colorado, Tex	do	16	352,000	48	45	105.60	
Do	do	Kansas City, Kans	1	22,000	42	39	6.60	
			17	374,000			112.20	41.34

CLAIMS AGAINST MISSOURI, KANSAS & TEXAS RAILWAY COMPANY.
THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Gray, G. G. (8)	Midland, Tex	Kansas City, Kans	4	88,000	44	41	$26.40	$10 66
Gray, G. W	Llano, Tex	National Stock Yards, Ill	3	66,000	50½	47½	19.80	7 28
Green, Jos. F., & Co. (8)	Encinal, Tex	do	3	66,000	51½	48½	19.80	8 04
Gray, Marvin. (8)	Summit, Okla	do	12	264,000	31	29	52.80	17 62
Griffith, Jno. (8)	do	Kansas City, Kans	26	352,000	22½	21	85 80	
Do	Pearsall, Tex	National Stock Yards, Ill	1	22,000	51½	48½	6 60	
Do	San Antonio, Tex	do	7	154,000	51½	48½	46 20	
Do	Floresville, Tex	do	10	220,000	51½	48½	66 00	
			44	748,000			204 60	76 03
Griffith, W. D. (8)	do	do	5	110,000	51½	48½	33 00	11 16
Guitar, Jno., jr. (8)	Abilene, Tex	do	121	2,662,000	46½	43½	798.60	
Do	Colorado, Tex	do	19	418,000	48	45	125.40	
			140	3,080,000			924 00	346 28
Gunter, Mrs. P. (8)	Mazie, Okla	do	46	1,012,000	28½	27½	75 90	24 20
Halff, H. M. (8)	Midland, Tex	Kansas City, Kans	34	748,000	44	41	224 40	
Do	do	National Stock Yards, Ill	1	22,000	50	47	6 60	
			35	770,000			231 00	98 62
Halff, M., & Bro. (8)	Pearsall, Tex	do	28	616,000	51½	48½	184 80	75 35
Hall, A. W	Georgetown, Tex	do	5	110,000	50½	47½	33 00	13 49
Hallan, R. G. (8)	Fort Worth, Tex	do	5	110,000	42½	39½	33 00	11 15
Halsell, W. E. (8)	Vinita, Okla	Kansas City, Kans	16	1,012,000	17	16½	56 60	16 91

Hamilton, H. A	San Angelo, Tex	National Stock Yards, Ill	2	44,000	49	46	13.20	4.42
Hamilton, J. R	do	do	2	44,000	49	46	13.20	4.48
Hamilton & Son	Sanderson, Tex	do	4	88,000	53½	50½	26.40	8.94
Hamilton, T. (8)	Cuero, Tex	do	2	44,000	51½	48½	13.20	4.47
Harlan, A. J	Wagoner, Okla	Kansas City, Kans	2	44,000	22	20	8.80	3.57
Harlan & Brown	do	do	6	132,000	22	20	26.40	8.62
Harris Childress&Co. (8)	San Angelo, Tex	National Stock Yards, Ill	3	66,000	49	46	19.80	6.61
Harris, C. B. (8)	Muskogee, Okla	do	4	88,000	31	29	17.60	5.70
Harrold, E. B. (8)	Italy, Tex	do	27	594,000	44½	41½	178.20	71.13
Harrold & Ware. (8)	do	do	52	1,144,000	44½	41½	343.20	143.29
Hart & Wigglesworth. (8)	Uvalde, Tex	do	8	176,000	51½	48½	52.80	17.78
Hawkins, M. G	Vinita, Okla	do	48	1,056,000	25½	25½	52.80	20.66
Hayden, C. (8)	Chouteau, Okla	do	8	176,000	28½	27½	13.20	
Do	do	Kansas City, Kans	5	110,000	19½	18½	11.00	
169			13	286,000			24.20	10.18
Hayden & Rucker. (8)	Schulter, Okla	National Stock Yards, Ill	6	132,000	3?	30	39.60	
Do	San Angelo, Tex	do	2	44,000	49	46	13.20	
			8	176,000			42.80	16.53
Heard & Trimble. (8)	Midland, Tex	do	10	220,000	50	47	66.00	24.56
Henderson, J. H. (8)	Colorado, Tex	do	21	462,000	48	45	138.60	56.11
Henson & Stewart. (8)	Stanton, Tex	Kansas City, Kans	13	286,000	43	40	85.80	31.91
Hermann, G. H	Letitin, Tex	National Stock Yards, Ill	3	66,000	51½	48½	19.80	6.56
Hico Oil Mill Co. (8)	Hico, Tex	do	63	1,386,000	44½	41½	415.80	167.92
Hobbs, G. W. (8)	San Angelo, Tex	do	3	66,000	49	46	19.80	6.62
Hoben, T. M. (8)	Nocona, Tex	do	17	374,000	42½	39½	112.20	41.84
Holland, J. H. (C)	Cole, Okla	do	5	110,000	41½	39	27.50	9.88
Holloway & Brown. (8)	Monohans, Tex	do	2	44,000	56½	53½	13.20	4.22
Holt, J. T. (8)	Honey Grove, Tex	do	18	396,000	42½	39½	118.80	48.13
Holt, O. B. (8)	Midland, Tex	Kansas City, Kans	5	110,000	44	41	33.00	10.23
Hoover, G. W	Fort Worth, Tex	National Stock Yards, Ill	5	110,000	42½	39½	33.00	10.85

169

CLAIMS AGAINST MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
House, J. L. (8)	Hockley, Tex	Kansas City, Kans	2	44,000	51¼	48½	$13.20	
Do	do	National Stock Yards, Ill	4	88,000	51¼	48½	26.40	
			6	132,000			39.60	$14 97
Howard, J. S. (8)	Summitt, Okla	do	4	88,000	31	29	17 60	
do	do	Kansas City, Kans	2	44,000	22½	21	6.60	
			6	132,000			24.20	7.82
Howard, S. E. (8)	Norcona, Tex	National Stock Yards, Ill	6	132,000	42½	39½	39 60	16 07
Hume, Geo. T. (8)	San Angelo, Tex	do	8	176,000	49	46	52 80	22.72
Hunt, E. D. (8)	Childress, Tex	Kansas City, Kans	5	110,000	36¼	33½	33.00	10.36
Hutton, T. S. (C)	Mazie, Okla	do	30	660,000	19½	19	33 00	
Do	Wagoner, Okla	do	4	88,000	22	20	17 60	
			34	748,000			50.60	22.19
Ikard & Carrow Bros. (8)	Henrietta, Tex	National Stock Yards, Ill	12	264,000	42½	39½	79 20	26 06
Irby, Ben	Crowder, Okla	do	5	110,000	36	35	11 00	4 23
Irvin, W. C. & Son	Cotulla, Tex	do	3	66,000	51½	48½	19.80	8 31
Irvine & Mills. (8)	Beaumont, Tex	do	2	44,000	195.35	88 75	13 20	4.49
Irving, J. B. (8)	Alpine, Tex	do	7	154,000	63½	60½	46 20	19 64
Jackson & Dumas. (8) 200	Caddo, Okla	do	5	110,000	41½	38	38.50	12 16
Jackson, G. W.	do	do	4	88.000	41½	38	30 80	
Do	do	Kansas City, Kans	1	22.000	35	31	8 80	
			5	110,000			39.60	13 02

Jackson & Harmon. (S)	Alpine, Tex	do	7	154,000	55½	52½	46.20		
Do	Marathon, Tex	do	2	44,000	55	52	13.20		
Do	Alpine, Tex	National Stock Yards, Ill	28	616,000	63½	60½	184.80		
			37	814,000			244.20	101.00	
Jackson, J. D. (S)	Marathon, Tex	do	13	286,000	61	58	85.80	36.73	
Jackson, S. W. (S)	Kiowa, Okla	Kansas City, Kans	24	528,000	31	29½	79.20	25.74	
Jarman & Warren. (S)	Colorado, Tex	do	10	220,000	42	39	66.00	22.46	
Jennings & Blocker. (S)	Spofford, Tex	National Stock Yards, Ill	15	330,000	51½	48½	99.00	33.53	
Jennings, Ford & Blocker. (S)	Del Rio, Tex	do	28	616,000	51½	48½	184.80	62.83	
Jennings & Hotchkiss. (S)	San Antonio, Tex	do	15	330,000	51½	48½	99.00	38.83	
Jennings, J. D. (S)	Spofford, Tex	do	7	154,000	51½	48½	46.20	15.69	
Jeter, A. H. (S)	Seymour, Tex	do	2	44,000	44½	41½	13.20	4.23	
Johnson, J. N. (S)	Midway, Okla	do	2	44,000	40	38	8.80		
Do	Atoka, Okla	do	5	110,000	39	38	11.00		
			7	154,000			19.80	7.09	
Johnson & Walker	Sweetwater, Tex	Kansas City, Kans	14	308,000	42	39	92.40	31.33	
Johnson, W. G. (S)	Cotulla, Tex	National Stock Yards, Ill	29	638,000	51½	48½	191.40	78.57	
Johnson, L. T	Giles, Tex	Kansas City, Kans	15	330,000	36½	33½	99.00	42.44	
Jones, H	Rosenberg, Tex	National Stock Yards, Ill	2	44,000	51½	48½	13.20	4.37	
Kay, F. J. (S)	Marlin, Tex	Kansas City, Kans	2	44,000	38½	35½	13.20	4.48	
Keeran, C. A. (S)	Encinal, Tex	National Stock Yards, Ill	3	66,000	51½	48½	19.80	6.70	
Kelly, J. E	Midlothian, Tex	do	4	88,000	42½	39½	26.40	10.86	
Kelly & Norris. (S)	Comstock, Tex	do	11	242,000	51½	48½	72.60	24.24	
Kennedy, M. R. (S)	Thorndale, Tex	Kansas City, Kans	7	154,000	48½	45½	46.20	18.15	
Keystone Land & Cattle Co. (S)	Pearsall, Tex	do	29	638,000	51½	48½	191.40	76.79	
Kilgore, C. L	Atoka, Okla	National Stock Yards, Ill	3	66,000	39	38	6.60		
Do	do	Kansas City, Kans	2	44,000	31	30½	1.10		
			5	110,000			7.70	2.88	

[1]Dollars per car.

CLAIMS AGAINST MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,
THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Kimbell, B. B. (S)	Mexia, Tex	Kansas City, Kans	6	132,000	44½	41½	39.60	13.97
Kincaid, W. D. (S)	Uvalde, Tex	National Stock Yards, Ill	28	616,000	51½	48½	184.80	62.59
King Bros	San Angelo, Tex	Kansas City, Kans	2	44,000	43	40	13.20	4.41
King, G. E. (S)	Taylor, Tex	National Stock Yards, Ill	47	1,034,000	50½	47½	310.20	120.00
Kirkland, T. A	West, Tex	do	7	154,000	44½	41½	46.20	19.19
Knox, J. W. (S)	Jacksboro, Tex	Kansas City, Kans	2	44,000	36½	33½	13.20	4.14
Kokernot Bros. (C)	Gonzales, Tex	National Stock Yards, Ill	2	44,000	51½	48½	13.20	4.47
Kuykendall, W. H. (S)	Encinal, Tex	Kansas City, Kans	11	242,000	51½	48½	72.60	29.35
Landa, Harry (S)	Uvalde, Tex	National Stock Yards, Ill	1	22,000	51½	48½	6.60	
Do	New Braunfels, Tex	do	12	264,000	51½	48½	79.20	
			13	286,000			85.80	34.87
Landy & Story. (S)	Sabinal, Tex	do	8	176,000	51½	48½	52.80	
Do	New Braunfels, Tex	do	68	1,496,000	51½	48½	448.80	
			76	1,672,000			501.60	198.65
Lawrence, G. A. (S)	Yoakum, Tex	do	6	132,000	51½	48½	39.60	12.74
Ledbetter & McAdams	Quanah, Tex	do	5	110,000	42½	39½	33.00	14.64
Lefors Bros. (S)	Vinita, Okla	do	64	1,408,000	25½	25½	70.40	26.78
Leonard Oil Mill Co. (S)	Leonard, Tex	do	6	132,000	42½	39½	39.60	16.15
Liebold & Co. (S)	Childress, Tex	Kansas City, Kans	2	44,000	36½	33½	13.20	4.21
Light & Williams	Munday, Tex	do	4	88,000	38½	35½	26.40	8.98
Lile & Berry. (S)	Kiowa, Okla	National Stock Yards, Ill	3	66,000	39	37½	9.90	
Do	do	Kansas City, Kans	3	66,000	31	29½	9.90	
			6	132,000			19.80	6.55

Lindsay Bros. (S)	Chouteau, Okla.	National Stock Yards, Ill	53	1,166,000	28½	27½	$ 87.45	
Do	Pryor Creek, Okla.	do	8	176,000	27½	27	4.40	
			61	1,342,000			91.85	32.24
Lindsay, G. B. (S)	Chouteau, Okla.	do	18	396,000	28½	27½	29.70	11.51
Little, J. J. (S)	Pearsall, Tex.	do	5	110,000	51½	48½	33.00	13.86
Livingston & Baldridge (S)	Wagoner, Okla.	Kansas City, Kans.	4	88,000	22	20	17.60	
Do	do	National Stock Yards, Ill	4	88,000	30½	28½	22.00	
			8	176,000			39.60	12.85
Livingston Bros. (S)	Wagoner, Okla.	Kansas City, Kans.	13	286,000	22	20	57.20	
Do	do	National Stock Yards, Ill	25	550,000	30½	28½	137.50	
			38	836,000			194.70	66.36
Livingston, J. M. (S)	do	Kansas City, Kans.	17	374,000	22	20	74.80	
Do	do	National Stock Yards, Ill	7	154,000	30½	28½	38.50	
			24	528,000			113.30	37.03
Llano Live Stock Co. (S)	Fort Worth, Tex.	Kansas City, Kans.	2	44,000	36½	33½	13.20	4.33
Longbotham, Thos. (S)	Wortham, Tex.	do	13	286,000	38½	35½	85.80	35.24
Lovelady, Jno. (S)	Colorado, Tex.	National Stock Yards, Ill	75	1,650,000	48	45	495.00	208.48
Loving, J. M., & Co	Royse City, Tex.	Kansas City, Kans.	3	66,000	36½	33½	19.80	8.29
Lowe, W. A. (S)	Cotulla, Tex.	National Stock Yards, Ill	23	506,000	51½	48½	151.80	
Do	San Antonio, Tex.	do	3	66,000	51½	48½	19.80	
			26	572,000			171.60	71.85
Lucas, C. B. (S)	Beeville, Tex.	do	19	418,000	51½	51	20.90	
Do	Taylor, Tex.	do	31	682,000	50½	47½	204.60	
			50	1,100,000			225.50	90.00

CLAIMS AGAINST MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Lucas & King. (C)	New Braunfels, Tex	National Stock Yards, Ill	6	132,000	51½	48½	39.60	15.55
McClendon Dr. J. W. (S)	Atoka, Okla	do	4	88,000	39	38	8.80	
Do	do	Kansas City, Kans	6	132,000	31	30½	3.30	
			10	220,000			12.10	5.22
McConnell, J. P	San Angelo, Tex	National Stock Yards, Ill	2	44,000	49	46	13.20	5.00
MacDonald, R. (S)	Baird, Tex	Kansas City, Kans	5	110,000	40½	37½	33.00	10.90
McEntire & Nussbaumer. (S)	Lehigh, Okla	National Stock Yards, Ill	13	286,000	40	38	57.20	18.41
McGaughey, W. F. (S)	Sweetwater, Tex	Kansas City, Kans	3	66,000	42	39	19.80	
Do	do	National Stock Yards, Ill	27	594,000	48	45	178.20	
			30	660,000			198.00	73.72
McKenzie, E. W. (S)	Monohans, Tex	Kansas City, Kans	15	330,000	50½	47½	99.00	41.85
McMillon, G. W. (S)	Amarillo, Tex	do	7	154,000	34½	31½	46.20	17.04
McNelly, T. H. (S)	Uvalde, Tex	National Stock Yards, Ill	26	572,000	51½	48½	171.60	66.58
Mangum, J. A. (S)	do	do	3	66,000	51½	48½	19.80	
Do	do	Kansas City, Kans	4	88,000	51½	48½	26.40	
			7	154,000			46.20	19.75
203								
Martin Bros	Spofford, Tex	National Stock Yards, Ill	8	176,000	51½	48½	52.80	17.84
Martin, Sid. (S)	San Angelo, Tex	do	7	154,000	49	46	46.20	14.76
Matador Land & Cattle Co. (S)	Estelline, Tex	Kansas City, Kans	20	440,000	34½	31½	132.00	56.78
Mathis, J. W. & G. (C)	D'Hanis, Tex	National Stock Yards, Ill	2	44,000	51½	48½	13.20	4.49

Matthews & May	Artesia, Tex	Kansas City, Kans	10	220,000	51½	48½	66.00	29.08
Maxwell-Crouch Mule Co.	San Angelo, Tex	National Stock Yards, Ill	38	836,000	49	46	250.80	109.14
Mayes, Mike. (S)	Coalgate, Okla	Kansas City, Kanss	4	88,000	31	30½	2.20	.96
Menke, C. A. (S)	Hemstead, Tex	do	5	110,000	44½	41½	33.00	
Do	Waller, Tex	National Stock Yards, Ill	6	132,000	51½	48½	39.60	
			11	242,000			72.60	29.98
Merchant, J. H., & Co	Mazie, Okla	do	10	220,000	19½	19	11.00	4.35
Meyers, E. V	Jolly, Tex	do	9	198,000	42½	39½	59.40	25.67
Middleton, A. C. (S)	do	do	11	242,000	31	29	48.40	16.05
Miller Bros. (S)	Cuero, Tex	do	2	44,000	51½	48½	13.20	4.41
Miller, J. B. (S)	Wagoner, Okla	Kansas City, Kans	17	374,000	22	20	74.80	
Do	Leliaetta, Okla	National Stock Yards, Ill	9	198,000	29½	28	34.65	
Do	do	Kansas City, Kans	2	44,000	21	19½	6.60	
			28	616,000			116.05	38.63
Miller, T. B. (C)	Sequin, Tex	National Stock Yards, Ill	4	88,000	51½	48½	26.40	10.67
Mills, A. W., & Son	San Angelo, Tex	do	2	44,000	49	46	13.20	4.42
Mitchell, A. E. (S)	Kyle, Tex	do	5	110,000	51½	48½	33.00	
Do	Austin, Tex	do	7	154,000	50½	47½	46.20	
			12	264,000			79.20	31.32
Monkhouse & Dilworth (S)	Floresville, Tex	Kansas City, Kans	4	88,000	51½	48½	26.40	9.09
Montague Bros	San Angelo, Tex	National Stock Yards, Ill	2	44,000	49	46	13.20	4.09
Moody & Farnham. (S)	Toyah, Tex	Kansas City, Kans	5	110,000	55½	52½	33.00	11.18
Moore, H. H. (S)	Yoakum, Tex	National Stock Yards. Ill	4	88,000	51½	48½	26.40	8.49
Morgan, D. (S)	Durant, Okla	do	23	506,000	41½	39	126.50	
Do	Antlers, Okla	do	3	66,000	40	36	26.40	
			26	572,000			152.90	62.39

CLAIMS AGAINST MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, THE DELIVERING LINE IN EACH SHIPMENT—Continued

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Morgan & Newell. (S)	Durant, Okla	do	7	154,000	41½	39	$ 38.50	
Do	Caddo, Okla	do	2	44,000	41½	38	15.40	
			9	198,000			53.90	$ 17.40
Morris & Co. (S)	Fort Worth, Tex	National Stock Yards, Ill	67	1,826,540	42½	39½	547.96	
Do	do	Kansas City, Kans	7	154,000	36½	33½	46.20	
Do	Sweetwater, Tex	do	2	44,000	48	45	13.20	
Do	Yorktown, Tex	do	2	44,000	51½	48½	13.20	
Do	Knippa, Tex	do	1	22,000	51½	48½	6.60	
Do	Midland, Tex	do	93	2,090,100	50	47	627.03	
Do	Marfa, Tex	do	3	66,000	63½	60½	19.80	
Do	Paloma, Tex	do	3	66,000	51½	48½	19.80	
Do	Uvalde, Tex	do	10	220,000	51½	48½	66.00	
Do	Bowie, Tex	do	1	22,000	42½	39½	6.60	
			199	4,554,640			1,366.39	514.90
204								
Mullins & Posey. (S)	Wagoner, Okla	do	6	132,000	22	20	26.40	8.63
Murphy, L. M. (S)	Fort Worth, Tex	do	4	88,000	36½	33½	26.40	9.64
Nabours & Hoffman. (S)	Cameron, Tex	do	3	66,000	42½	39½	19.80	8.15
Nash Bros. (S)	Kaufman, Tex	National Stock Yards, Ill	5	110,000	42½	39½	33.00	11.07
Naylor, Jones & Hugo. (S)	Cotulla, Tex	do	28	616,000	51½	48½	184.80	75.83
Naylor & Weldon. (S)	Wagoner, Okla	do	1	22,000	30¾	28½	5.50	
Do	Mazie, Okla	do	2	44,000	28¼	27½	3.30	
			3	66,000			8.80	2.90
Newman & Burleson. (S)	Childress, Tex	Kansas City, Kans	29	638,000	36½	33½	191.40	70.28
Newton & Faulk. (S)	Calvert, Tex	National Stock Yards, Ill	8	176,000	48½	45½	52.80	24.63

Noel, J. M.	Giles, Tex.	Kansas City, Kans.	5	110,000	36½	33½	33.00	14.22
			5	110,000	36½	33½	33.00	
North Tex. Live Stock Com. Co.	Fort Worth, Tex.	do	8	176,000	43	40	52.80	
Do	Big Springs, Tex.	do	3	66,000	51½	48½	19.80	
Do	Stamford, Tex.	do						
			16	352,000			105.60	45.49
O'Connor & Co. (S)	Cotulla, Tex.	National Stock Yards, Ill	8	176,000	51½	48½	52.80	17.54
O'Daniel & Cox	San Angelo, Tex.	do	4	88,000	49	46	26.40	8.85
Odom, G. G. (S)	Fort Worth, Tex.	Kansas City, Kans.	7	154,000	36½	33½	46.20	19.30
Oppenheimer, D. & A. (S)	San Antonio, Tex.	National Stock Yards, Ill	18	396,000	51½	48½	118.80	41.44
Ortez, L. R. (S)	Cotulla, Tex.	do	16	352,000	51½	48½	105.60	43.85
Owen, A. G.	El Reno, Okla.	Kansas City, Kans.	2	44,000	31	28	13.20	4.15
Owen & Cain. (S)	Eufaula, Okla.	National Stock Yards, Ill	5	110,000	36	32½	38.50	
Do	Crowder, Okla.	do	1	22,000	36	35	2.20	
Do	Checotah, Okla.	do	1	22,000	32	30½	3.30	
			7	154,000			44.00	15.86
Parkinson & Gibson. (S)	Mazie, Okla.	do	10	220,000	28½	27½	16.50	5.31
Parkinson, T. A. (S)	Wagoner, Okla.	do	1	22,000	30½	28½	5.50	
Do	do	Kansas City, Kans.	3	66,000	22	20	13.20	
			4	88,000			18.70	6.56
205								
Parks, S.	Odessa, Tex.	do	6	132,000	45½	42½	39.60	16.84
Payne, Joe N. (S)	Caddo, Okla.	do	3	66,000	35	31	26.40	
Do	Hodge, Tex.	do	2	44,000	36½	33½	13.20	
			5	110,000			39.60	13.75
Payne, Woolfolk & Tankersley. (S)	Seymour, Tex.	National Stock Yards, Ill	7	154,000	44½	41½	46.20	

CLAIMS AGAINST MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Payne, Woolfield & Tankersley, (8)	Wichita Falls, Tex	National Stock Yards, Ill	5	110,000	42½	39½	$33 00	
Do	Seymour, Tex	Kansas City, Kans	8	176,000	38½	35½	52 80	
			20	440,000			132.00	$42.20
Peery & Fields. (8)	Gainesville, Tex	do	11	242,000	36½	33½	72.60	
Do	Munster, Tex	do	5	110,000	36½	33½	33.00	
			16	352,000			105.60	43.15
Pemberton & Co. (C)	Shawnee, Okla	do	11	242,000	31	28	72.60	25.70
Perkins, Z. C. (8)	Sulphur Springs, Tex	do	5	110,000	36½	33½	33.00	13.71
Peterman, J. A.	Muskogee, Okla	National Stock Yards, Ill	2	44,000	31	29	8.80	
Do	do	Kansas City, Kans	2	44,000	22½	21	6.60	
			4	88,000			15.40	5.07
Peurifoy & Burton. (8)	Wortham, Tex	do	4	88,000	38½	35½	26.40	8.84
Pfeuffer, Gus. (8)	New Braunfels, Tex	National Stock Yards, Ill	3	66,000	51½	48½	19.80	6.69
Pierce, H. A. (8)	Waxahachie, Tex	do	10	220,000	42½	59½	66.00	26.17
Poole, T. H.	Encinal, Tex	do	1	22,000	51½	48½	6.60	
Do	Cotulla, Tex	do	2	44,000	51½	48½	13.20	
			3	66,000			19.80	7.38
Potts, J. A. (8)	Encinal, Tex	do	7	154,000	51½	48½	46.20	15.38
Powell, J. C. (8)	Fort Worth, Tex	Kansas City, Kans	14	308,000	36½	33½	92.40	34.47

Price, J. L. (S)	Checotah, Okla	do	4	88,000	23½	22½	8.80	
Do	do	National Stock Yards, Ill	16	350,000	32	30½	52.80	
			20	440,000			61.60	23.63
Price, T. M. (S)	do	Kansas City, Kans	8	176,000	23½	22½	17.60	7.52
Proctor & Bowman. (C)	Quanah, Tex	National Stock Yards, Ill	3	66,000	42½	39½	19.80	8.52
Pryor, Ike T. (S)	Uvalde, Tex	Kansas City, Kans	20	440,000	51½	48½	132.00	
Do	do	National Stock Yards, Ill	69	1,518,000	51½	48½	455.40	
208			89	1,958,000			587.40	204.21
Pulliam, N. B. (S)	do	do	7	154,000	51½	48½	46.20	15.75
Pumphrey, R. B. (S)	Pearsall, Tex	do	5	110,000	51½	48½	33.00	
Do	Floresville, Tex	do	24	528,000	51½	48½	158.40	
Do	Taylor, Tex	do	3	66,000	50½	47½	19.80	
Do	Sabinal, Tex	do	4	88,000	51½	48½	26.40	
			36	792,000			237.60	97.42
Pumphrey & Wells. (S)	Taylor, Tex	do	8	176,000	50½	47½	52.80	21.52
Quinn, J. K. (S)	Quanah, Tex	Kansas City, Kans	5	110,000	36½	33½	33.00	12.57
Raht, A. W. (S)	Henrietta, Tex	National Stock Yards, Ill	3	66,000	42½	39½	19.80	3.55
Rankin, F. E. (S)	Odessa, Tex	Kansas City, Kans	1	22,000	45½	42½	6.60	
Do	Monohans, Tex	do	2	44,000	50½	47½	13.20	
Do	Midland, Tex	do	1	22,000	44	41	6.60	
			4	88,000			26.40	11.38
Ray & Cobb. (S)	Harrold, Tex	do	4	88,000	36½	33½	26.40	8.77
Ray & Son. (S)	Midway, Okla	National Stock Yards, Ill	8	176,000	40	38	35.20	
Do	Stringtown, Okla	do	4	88,000	39	38	8.80	
			12	264,000			44.00	14.18

CLAIMS AGAINST MISSOURI, KANSAS & TEXAS RAILWAY COMPANY.
THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Reed, J. E. (S)	Nocona, Tex	Kansas City, Kans	4	88,000	36½	33½	26 40	11 03
Reid Bros	Wagoner, Okla	do	4	88,000	22	20	17.60	5.89
Reynolds Cattle Co. (S)	Cisco, Tex	National Stock Yards, Ill	24	528,000	44½	41½	158.40	62.05
Rhodes, M. L	Kiowa, Okla	Kansas City, Kans	3	66,000	31	29½	9.90	
Do	Durant, Okla	do	7	154,000	35½	31½	61.60	
			10	220,000			71.50	25.49
Rice, H. B	Houston, Tex	do	10	220,000	51½	48½	66.00	27.12
Richards, T. S	Seymour, Tex	do	2	44,000	38½	35½	13.20	4.28
Richardson, Asher. (S)	Encinal, Tex	National Stock Yards, Ill	21	462,000	51½	48½	138.60	52.63
Riddels, R. A. (S)	Caddo, Okla	Kansas City, Kans	2	44,000	35	31	17.60	
Do	do	National Stock Yards, Ill	9	198,000	41½	38	69.30	
			11	242,000			86.90	27.66
207								
Robertson, W. F. (S)	Seymour, Tex	do	3	66,000	44½	41½	19.80	7.70
Roberson & Wilson. (S)	Amarillo, Tex	Kansas City, Kans	5	110,000	34½	31½	33.00	12.18
Roby & Culberson. (S)	McGregor, Tex	National Stock Yards, Ill	4	88,000	44½	41½	26.40	10.95
Rogers, Hugh. (S)	Stanton, Tex	do	5	110,000	49	46	33.00	
Do	Cisco, Tex	Kansas City, Kans	12	264,000	38½	35½	79.20	
Do	do	National Stock Yards, Ill	27	594,000	44½	41½	178.20	
			44	968,000			290.40	117.07
Rothe, F	D'Hanis, Tex	do	3	66,000	51½	48½	19.80	7.75
Ruble & Wagoner. (S)	Wagoner, Okla	Kansas City, Kans	3	66,000	22	20	13.20	

Do	Leliaetta, Okla	do	1	22,000	21	19½	3.30	
Do	Wagoner, Okla	National Stock Yards, Ill	2	44,000	30½	28½	11.00	
			6	132,000			27.50	9.15
Rucker, F. M. (S)	Chouteau, Okla	Kansas City, Kans	2	44,000	19½	18½	4.40	1.94
Russell & Blocker. (S)	San Angelo, Tex	National Stock Yards, Ill	10	220,000	49	46	66.00	20.45
Russell & Woodley. (S)	Weowaka, Okla	do	2	44,000	39	36	13.20	4.28
Salmon, W. M	Nocona, Tex	do	6	132,000	42½	39½	39.60	15.50
Sanders, J. W. (S)	Summitt, Okla	do	4	88,000	31	29	17.60	
Do	Muskogee, Okla	do	4	88,000	31	29	17.60	
			8	176,000			35.20	14.93
Sansom, D. F. (S)	Alvarado, Tex	do	3	66,000	42½	39½	19.80	
Do	do	Kansas City, Kans	5	110,000	36½	33½	33.00	
			8	176,000			52.80	19.66
Saunders, G. W. (S)	San Antonio, Tex	National Stock Yards, Ill	19	418,000	51½	48½	125.40	
Do	Pearsall, Tex	do	2	44,000	51½	48½	13.20	
Do	Fort Worth, Tex	do	1	22,000	42½	39½	6.60	
Do	Cotulla, Tex	do	9	198,000	51½	48½	59.40	
Do	Hallettsville, Tex	do	1	22,000	51½	48½	6.60	
			32	704,000			211.20	86.14
Saunders, T. B. (S)	Fort Worth, Tex	do	20	440,000	42½	39½	132.00	
Do	do	Kansas City, Kans	3	66,000	36½	33½	19.80	
			23	506,000			151.80	50.21
Scaling, Geo, A. (S)	Henrietta, Tex	National Stock Yards, Ill	41	902,000	42½	39½	270.60	106.66
Scaling, S. T	Dundee, Tex	do	3	66,000	42½	39½	19.80	7.66
Scarborough & Pendleton. (S)	Farmersville, Tex	do	11	242,000	42½	39½	72.60	30.15
Scharbauer & Reed	Odessa, Tex	Kansas City, Kans	2	44,000	45½	42½	13.20	5.75
Schreiner & Halff. (S)	Pearsall, Tex	National Stock Yards, Ill	99	2,178,000	51½	48½	653.40	257.41

CLAIMS AGAINST MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Sabults, Mrs. G., & Co.	Falls City, Tex	do	3	66,000	51½	48½	$19.80	$7.82
Scruggs & Miller. (S)	Taylor, Tex	do	2	44,000	50½	47½	13.20	4.38
Seay Bros. (C)	Belcher, Tex	do	8	176,000	42½	39½	52.80	
Do	do	Kansas City, Kans	11	242,000	36½	33½	72.60	
Do	do	do	3	66,000	31½	33½	19.80	
208			22	492,200			145.20	54.39
Seekamp, H. (S)	Yoakum, Tex	National Stock Yards, Ill	5	110,000	51½	48½	33.00	10.44
Shaw, F. M. (S)	San Antonio, Tex	Kansas City, Kans	1	22,000	51½	48½	6.60	
Do	Cotulla, Tex	National Stock Yards, Ill	16	352,000	51½	48½	105.60	
			17	374,000			112.20	37.37
Shawnee Cotton Oil Co. (S)	Shawnee, Okla	do	28	616,000	39	36	184.80	
Do	do	Kansas City, Kans	10	220,000	31	28	66.00	
			38	836,000			250.80	102.17
Shely & Hunter. (S)	Karnes City, Tex	National Stock Yards, Ill	8	176,000	51½	48½	52.80	
Do	Falls City, Tex	do	14	308,000	51½	48½	92.40	
			22	484,000			145.20	50.92
Shields, G. W	San Angelo, Tex	do	3	66,000	49	46	19.80	7.56
Shiner, M. K. & R. H. (S)	Pearsall, Tex	do	15	330,000	51½	48½	99.00	38.82
Shropshire & Harness. (S)	Odessa, Tex	Kansas City, Kans	1	22,000	45½	42½	6.60	

Shropshire & Harness. (S)	Colorado, Tex	do	2	44,000	42	39	13.20	
Do	Big Springs, Tex	do	5	110,000	43	40	33.00	
			8	176,000			52.80	21.33
Simmons, J. S	Lone Oak, Tex	National Stock Yards, Ill	7	154,000	42½	39½	46.20	16.22
Simmons, W. M. (S)	Lone Oak, Tex	do	3	66,000	42½	39½	19.80	7.82
Sittel, Fritz. (S)	Crowder, Okla	do	7	154,000	36	35	15.40	
Do	North McAlester, Okla	Kansas City, Kans	8	176,000	31	28	52.80	
			15	330,000			68.20	
209								
Skinner, J. W. (S)	Adair, Okla	do	19	418,000	18	17½	20.90	3.70
Skinner, Nat. (S)	Pryor, Okla	do	2	44,000	18½	18	2.20	
Do	Chouteau, Okla	do	12	264,000	19½	18½	25.40	
			14	308,000			28.60	12.44
Slaughter, C. C. (S)	Stanton, Tex	do	26	572,000	43	40	171.60	
Do	do	National Stock Yards, Ill	12	264,000	40	48	79.20	
Do	Big Springs, Tex	Kansas City, Kans	9	198,000	43	40	59.40	
			47	1,034,000			310.20	123.98
Slaughter, Jno. B. (S)	Stanton, Tex	do	5	110,000	43	40	33.00	14.59
Smith, B. J. (C)	Fort Worth, Tex	National Stock Yards, Ill	1	22,000	42½	39½	6.60	2.18
Smith & Corkill. (S)	do	do	4	88,000	42½	39½	26.40	11.03
Smith, N. W	Wagoner, Okla	Kansas City, Kans	8	176,000	22	20	35.20	11.46
Stanfield Bros. (S)	Walton, Tex	do	10	220,000	36½	33½	66.00	
Do	Henrietta, Tex	do	35	770,000	36½	33½	231.00	
Do	do	do	12	264,000	36½	33½	79.20	
			57	1,254,000			376.20	104.08
Steele, W. J	Thornton, Tex	National Stock Yards, Ill	6	132,000	44½	41½	39.60	16.15
Stephens, B. T., trustee	Floresville, Tex	do	3	66,000	51½	48½	19.80	8.44

CLAIMS AGAINST MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Sterling, E. C., & Son	Seymour, Tex	do	6	132,000	44½	41½	$39.60	$12.60
Stewart, Bud	Uvalde, Tex	do	17	374,000	51½	48½	112.20	50.24
Stewart, Jim	Monohans, Tex	do	2	44,000	50½	53½	13.20	
Do	Childress, Tex	do	4	88,000	42½	39½	26.40	
			6	132,000			33.60	14.59
Stewart & Robertson	Sabinal, Tex	Kansas City, Kans	9	198,000	51½	48½	59.40	
Do	do	National Stock Yards, Ill	1	22,000	51½	48½	6.60	
			10	220,000			66.00	22.38
Stokes & Warren. (S)	Colorado, Tex	do	2	44,000	48	45	13.20	
Do	do	Kansas City, Kans	1	22,000	42	39	6.60	
			3	66,000			19.80	6.43
Storey, H. C. (S)	Dilley, Tex	National Stock Yards, Ill	8	176,000	51½	48½	52.80	
Do	Uvalde, Tex	do	8	176,000	51½	48½	52.80	
			16	352,000			105.60	42.35
210								
Stubbs, F. M	Cotulia, Tex	do	5	110,000	51½	48½	33.00	13.56
Sublett & Trammell	Sweetwater, Tex	do	10	220,000	48	45	66.00	27.28
Sugg, J. D. (S)	San Angelo, Tex	do	17	374,000	49	46	112.20	34.89
Summers, J. J	Cuero, Tex	do	4	88,000	51½	48½	26.40	10.98
Sutherland, G. W., & Co (S)	Chouteau, Okla	do	8	176,000	28½	27½	13.20	5.76
Sutherland, J. B	Fort Worth, Tex	do	2	44,000	42½	39½	13.20	4.09
Tadlock, R. M	do	do	2	44,000	42½	39½	13.20	4.14
Tankersley, F. (S)	San Angelo, Tex	do	5	110,000	49	46	33.00	12.45
Taylor, F. W. (S)	Kiowa, Okla	Kansas City, Kans	17	374,000	31	29½	56.10	17.75

Taylor, J. R. (S)	Georgetown, Tex	National Stock Yards, Ill	18	396,000	50½	47½	118.80	48 91	
Taylor, Stanley. (S)	Fort Worth, Tex	do	2	44,000	42½	39½	13.20		
Do	Clarendon, Tex	Kansas City, Kans	1	220,000	36½	33½	6.60		
Do	Fort Worth, Tex	do	8	176,000	36½	33½	52.80		
Do	Midland, Tex	do	1	22,000	44	41	6.00		
			12	264,000			79.20	25.85	
Taylor & Thompson. (S)	Kiowa, Okla	National Stock Yards, Ill	11	242,000	39	37½	36.30		
Do	do	Kansas City, Kans	22	484,000	31	29½	72.60		
			33	726,000			108.90	35.80	
Thompson, C. M. (S)	Fort Worth, Tex	National Stock Yards, Ill	51	1,122,000	42½	39½	336.60		
Do	Quanah, Tex	Kansas City, Kans	1	22,000	36½	33½	6.60		
Do	Midland, Tex	do	7	154,000	44	41	46.20		
Do	Monohans, Tex	do	3	66,000	50½	47½	19.80		
Do	Van Horn Tex	do	2	44,000	55½	52½	13.20		
Do	Marathon, Tex	do	2	44,000	55	52	13.20		
			66	1,452,000			435.60	188.40	
Thompson, J. D., & Co. (S)	Amarillo, Tex	do	7	154,000	34½	31½	46.20	17.04	
Thompson, N. D	Colorado, Tex	do	6	132,000	48	45	39.60	15.11	
Thompson & Thompson (S)	Amarillo, Tex	do	7	154,000	36½	33½	46.20	17.40	
Thompson, W. F. (S)	Pearsall, Tex	National Stock Yards, Ill	8	176,000	51½	48½	52.80	17.49	
Thornton, J. S., est	Floresville, Tex	do	7	154,000	51½	48½	46.20	17.17	
Timberlake, J. W. (S)	do	do	4	88,000	51½	48½	26.40	11.33	
Timberlake, Edgar. (S)	do	do	4	88,000	51½	48½	26.40	10.36	
Todd, J. A. (S)	Muskogee, Okla	do	3	66,000	31	29	13.20		
Do	Spaulding, Okla	do	1	22,000	39½	36	8.25		
Do	Summitt, Okla	do	11	242,000	31	29	48.40		
Do	do	Kansas City, Kans	28	616,000	22½	21	92.40		
			43	946,000			162.25	36.09	

CLAIMS AGAINST MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest
			No.	*Pounds.*	*Cents.*	*Cents.*		
Todd, J. S. (S)	Stanton, Tex	do	10	220,000	43	40	$66.00	
Do	San Angelo, Tex	National Stock Yards, Ill	9	198,000	49	46	59.40	
Do	Big Springs, Tex	do	4	88,000	49	46	26.40	
Do	Fort Worth, Tex	do	9	198,000	42½	39½	59.40	
			32	704,000			211.20	$92.44
Todd & March. (S)	Summitt, Okla	do	32	704,000	31	20	140.80	51.08
Todd, T. R., & Co. (S)	Muskogee, Okla	do	10	220,000	31	20	44.00	17.83
Tom, H. S., & Son. (C)	Floresville, Tex	do	20	440,000	51½	48½	132.00	53.86
Trammell, D. M. (S)	West, Tex	Kansas City, Kans	16	352,000	38½	35½	105.60	
Do	Hillsboro, Tex	do	8	176,000	38½	35½	52.80	
Do	do	National Stock Yards, Ill	4	88,000	44½	41½	26.40	
			28	616,000			184.80	74.16
Trammell, D. M. & W. E	West, Tex	Kansas City, Kans	21	462,000	44½	41½	138.60	
Do	Hillsboro, Tex	do	8	176,000	44½	41½	52.80	
			29	638,000			191.40	69.39
Trammell & Sons. (S)	Itasca, Tex	do	7	154,000	44½	41½	46.20	16.42
Trout, N. T	Ada, Okla	National Stock Yards, Ill	2	44,000	40½	37½	13.20	5.73
Tucker, Jess. (S)	Kiowa, Okla	do	8	176,000	39	37½	26.40	
Do	Atoka, Okla	do	2	44,000	39	38	4.40	
			10	220,000			30.80	11.01
Turner, W. J. (S)	Hallettsville, Tex	do	10	220,000	51½	48½	66.00	27.45
Uvalde Live Stock Co. (S)	Uvalde, Tex	do	4	88,000	51½	48½	26.40	10.35

Vanham, H. (S)	....do	....do	6	132,000	51½	48½	39.60	13.42
Van Tuyl Ben. (S)	Fort Worth, Tex	Kansas City, Kans	5	110,000	36½	33½	33.00	12.17
Vick, J. T. (S)	Altair, Tex	National Stock Yards, Ill	10	220,000	51½	48½	66.00	22.39
Voliva, Thos. (S)	Midland, Tex	Kansas City, Kans	8	176,000	44	41	52.80	
Do	Hodge, Tex	....do	10	220,000	42½	39½	66.00	
Do	Midland, Tex	National Stock Yards, Ill	1	22,000	50	47	6.60	
			19	418,000			125.40	43.66
Van Roeder, W.&R.	Yorktown, Tex	National Stock Yards, Ill	8	176,000	51½	48½	$52.80	$23.1[illegible]
Waggoner, D.& Son. (S)	Vernon, Tex	....do	5	110,000	42½	39½	33.00	10.79
Waggoner, W. T. (S)	Fulda, Tex	....do	74	1,628,000	42½	39½	488.40	
Do	Electra, Tex	....do	76	1,672,000	42½	39½	501.60	
212			150	3,300,000			990.00	335.86
Walker, W. (S)	Wagoner, Okla	....do	2	44,000	30¼	28¼	11.00	3.65
Ward, B. N. (S)	Flora, Okla	....do	11	242,000	39	38	24.20	9.15
Ward, C. J.	Limestone, Okla	....do	5	110,000	37	31	66.00	25.32
Ward, J. D. (S)	Muskogee, Okla	....do	6	132,000	31	29	26.40	11.05
Warren, I. D. (S)	Bluffdale, Tex	....do	16	352,000	44½	41½	105.60	43.85
Warren, W.E.&Son. (S)	Colorado, Tex	....do	3	66,000	48	45	19.80	
Do	Iatan, Tex	Kansas City, Kans	5	110,000	43	40	33.00	
Do	Colorado, Tex	....do	2	44,000	42	39	13.20	
Do	Fort Worth, Tex	National Stock Yards, Ill	3	66,000	42½	39½	19.80	
			13	286,000			85.80	28.17
Watson, Pete. (S)	Caddo, Okla	....do	7	154,000	41½	38	53.90	
Do	Midway, Okla	....do	16	352,000	40	38	70.40	
			23	506,000			124.30	38.57
Watson, Wm	Lometa, Tex	....do	23	506,000	45½	42½	151.80	60.12
Weaver, A. N. (S)	Wortham, Tex	Kansas City, Kans	3	66,000	38½	35½	19.80	8.28
Weaver, F. M. (S)	Stanton, Tex	National Stock Yards, Ill	15	330,000	49	46	99.00	36.90

CLAIMS AGAINST MISSOURI, KANSAS, & TEXAS RAILWAY COMPANY, THE DELIVERING LINE IN EACH SHIPMENT—Continued

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Weaver, J. L. (8)	Kiowa, Okla	do	12	264,000	30	37½	$39.60	
Do	do	Kansas City, Kans	1	22,000	31	29½	3.30	
			13	286,000			42.90	$13.92
Weaver & Taylor	Sulphur Springs, Tex	do	7	154,000	36½	33½	46.20	19.76
Webb, E. L. (8)	Bellevue, Tex	National Stock Yards, Ill	9	198,000	42½	39½	59.40	25.62
Webb, Sidney. (8)	do	do	43	946,000	42½	39½	283.80	
Do	Henrietta, Tex	do	9	198,000	42½	39½	59.40	
			52	1,144,000			343.20	113.43
Welder, J. F. (8)	Floresville, Tex	do	4	88,000	51½	48½	26.40	8.79
Weldon, C. H. (C)	Wagoner, Okla	Kansas City, Kans	3	66,000	22	20	13.20	5.27
West, Geo. W	Beeville, Tex	National Stock Yards, Ill	15	330,000	51½	51	16.50	6.59
Whaley & Jones. (8)	Gainesville, Tex	Kansas City, Kans	22	484,000	36½	33½	145.20	61.30
Whatley, W. W. (8)	Honey Grove, Tex	National Stock Yards, Ill	5	110,000	42½	39½	33.00	13.41
Whisenant & Fowler	Giles, Tex	Kansas City, Kans	3	66,000	36½	33½	19.80	8.53
White & Bachelor	Lancaster, Tex	National Stock Yards, Ill	10	220,000	42½	39½	66.00	26.54
White, C. E	Fort Worth, Tex	do	7	154,000	42½	39½	46.20	18.64
White & Swearingen. (8)	Childress, Tex	Kansas City, Kans	40	880,000	36½	33½	264.00	84.26
Whitesboro Cotton Oil Co. (8)	Whitesboro, Tex	do	24	528,000	36½	33½	158.40	65.74
Whiting, G. D. F. (8)	Bells, Tex	National Stock Yards, Ill	3	66,000	42½	39½	19.80	6.49
Wickliffe, R. L. (8)	St. Joseph, Tex	do	2	44,000	42½	39½	13.20	4.33
Wigglesworth & Burns (8) 213	Fort Worth, Tex	do	3	66,000	42½	39½	19.80	6.62
Wigglesworth, Ed. (8)	do	do	15	330,000	42½	39½	99.00	
Do	Odessa, Tex	do	2	44,000	51½	48½	13.20	
Do	Goliad, Tex	do	1	22,000	51½	48½	6.60	
Do	Roscoe, Tex	do	3	66,000	48	45	19.80	

Wigglesworth, Ed. (S)	Uvalde, Tex	do	6	132,000	51½	48½	39.60	
			27	594,000			178.20	71.61
Wigglesworth & Hart. (S)	Spofford, Tex	Kansas City, Kans	4	88,000	51½	48½	26.40	
Do	Uvalde, Tex	National Stock Yards, Ill	8	176,000	51½	48½	52.80	
			12	264,000			79.20	26.80
Williams, J. M. (S)	Stanton, Tex	do	6	132,000	43	40	39.60	
Do	Big Springs, Tex	do	4	88,000	43	40	26.40	
Do	Colorado, Tex	do	3	66,000	42	39	19.80	
			13	286,000			85.80	35.90
Wilson & Alexander. (S)	Pilot Point, Tex	do	4	88,000	36½	33½	26.40	10.74
Wilson, G. W. (S)	Fort Worth, Tex	do	4	88,000	42½	39½	26.40	
Do	Denton, Tex	do	22	484,000	42½	39½	145.20	
			26	572,000			171.60	58.61
Wilson, J. B. (S)	Henrietta, Tex	do	8	176,000	42½	39½	52.80	
Do	Dundee, Tex	do	30	660,000	42½	39½	198.00	
			38	836,000			250.80	96.45
Wilson, J. E	Amarillo, Tex	Kansas City, Kans	5	110,000	34½	31½	33.00	12.18
Wilson, L. F. (S)	Whitesboro, Tex	do	9	198,000	36½	33½	59.40	
Do	Wichita Falls, Tex	National Stock Yards, Ill	1	22,000	42½	39½	6.60	
			10	220,000			66.00	23.54
Winston, S. J	Rosenberg, Tex	National Stock Yards, Ill	6	132,000	51½	48½	39.60	15.02
Winter, M. R. (S)	Stringtown, Okla	do	33	726,000	39	38	72.60	28.54
Witherspoon, Jno. F. (S)	Roff, Okla	do	6	132,000	41	38	39.60	16.38
Wolcott, G. W. (S)	Stanton, Tex	do	2	44,000	49	46	13.20	5.14

CLAIMS AGAINST MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, THE DELIVERING LINE IN EACH SHIPMENT.—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Wood, T. D. (S)	Summitt, Okla	do	16	352,000	31	29	$ 70.40	
Do	do	Kansas City, Kans	2	44,000	22½	21	6.60	
214			18	396,000			77.00	$24.95
Woodall, Ed. (S)	Hillsboro, Tex	National Stock Yards, Ill	20	440,000	44½	41½	132.00	54.91
Woodley, H.B., estate. (S)	Sabinal, Tex	do	2	44,000	51½	48½	13.20	4.47
Woodrum, W. F. (S)	Seymour, Tex	do	9	198,000	44½	41½	59.40	
Do	Dundee, Tex	do	11	242,000	42½	39½	72.60	
			20	440,000			132.00	49.14
Woods, Lee. (S)	Shawnee, Okla	do	39	858,000	39	36	257.40	
Do	Ada, Okla	do	9	198,000	40½	37½	59.40	
Do	Caddo, Okla	do	4	88,000	41½	38	30.80	
			52	1,144,000			347.60	140.02
Worsham, W. B. (C)	Dickworsham, Tex	do	26	572,000	42½	39½	171.60	
Do	Henrietta, Tex	do	37	814,000	42½	39½	244.20	
Do	do	Kansas City, Kans	46	1,012,000	36½	33½	303.60	
			109	2,398,000			719.40	250.11
Yarborough, Jas. (S)	Durant, Okla	National Stock Yards, Ill	2	44,000	41½	39	11.00	4.83
Yarborough, P. (S)	Myra, Tex	Kansas City, Kans	5	110,000	36½	33½	33.00	10.98
Yates, T. G. (S)	Summitt, Okla	National Stock Yards, Ill	14	308,000	31	29	61.60	27.38
Young, O. G. (S)	Van Horn, Tex	Kansas City, Kans	19	418,000	55½	52½	125.40	47.07
Zellweger, J.	El Reno, Okla	do	3	66,000	31	28	19.80	6.24

CLAIMS AGAINST ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, THE DELIVERING LINE IN EACH SHIPMENT.

Berry, J. E. (S)	Pearsall, Tex	National Stock Yards, Ill	11	246,900	51½	48½	$74.07	$25.70
Bilhartz, Joe. (S)	do	do	2	44,000	51½	48½	13.20	4.44
Blackwell, E.&W. (S)	Cuero, Tex	do	5	117,600	51½	48½	35.28	
Do	Karnes City, Tex	do	1	22,000	51½	48½	6.60	
215			6	139,600			41.88	13.89
, J. R. (S)	Encinal, Tex	do	5	110,000	51½	48½	33.00	11.06
Cassidy-Courtney & Doerr. (S)	Beeville, Tex	do	24	554,100	51½	51	27.71	9.17
Cauble, C. M. (S)	Albany, Tex	do	3	66,000	45½	42½	19.80	6.60
Chiders, J. G. (S)	Cotulla, Tex	do	7	156,200	51½	48½	46.86	15.79
Calttim, J. M. (S)	Spofford, Tex	do	16	352,000	51½	48½	105.60	35.56
Coleman, T.A. (Childress & Coleman). (S)	Encinal, Tex	do	15	339,400	51½	48½	101.82	34.34
Cook-Hereford Cattle Co. (S)	Pearsall, Tex	do	16	354,200	51½	48½	106.26	41.71
Coughran, W.A.&T.B.(S)	Floresville, Tex	do	10	220,000	51½	48½	66.00	22.14
Cowden, G.E.&W.H. (S)	Pearsall, Tex	do	26	582,000	51½	48½	174.60	58.82
Crawford, W. L. (S)	Dilley, Tex	do	3	66,000	51½	48½	19.80	6.75
Crews, S. E.	Kyle, Tex	do	3	66,000	51½	48½	19.80	6.55
Davis & Jennings. (S)	Beeville, Tex	do	3	66,000	51½	51	3.30	1.09
Duderstadt, Phil.	Cuero, Tex	do	4	88,000	51½	48½	26.40	8.84
Ford, W. H. (S)	Encinal, Tex	do	3	66,000	51½	48½	19.80	6.74
Gage & Flowers. (S)	Cotulla, Tex	do	12	454,800	51½	48½		
Do	Floresville, Tex	do	8	(1)	51½	48½	136.44	
			20	454,800			136.44	45.29
Halff, M., & Bro. (S)	Pearsall, Tex	do	11	260,700	51½	48½	78.21	33.69
Kennedy, M. R. (S)	Taylor, Tex	do	3	74,300	50½	47½	22.29	7.47
Keystone Land & Cattle Co. (S)	Pearsall, Tex	do	28	637,000	51½	48½	191.10	66.14

[1] Included above.

CLAIMS AGAINST ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
King, G. E. (S)	Taylor, Tex	do	7	158,200	50½	47½	$47.46	$15.95
Landa & Storey. (S)	New Braunfels, Tex	do	9	207,000	51½	48½	62.10	21.06
Little, J. J. (S)	Pearsall, Tex	do	7	161,700	51½	48½	48.51	15.92
Longbotham, W. T	Wortham, Tex	do	2	44,000	44½	41½	13.20	4.42
Mance Bros. (S)	Kyle, Tex	do	2	45,400	51½	48½	13.62	4.50
Mitchell-Blalock & Co	Cotulla, Tex	do	25	552,200	51½	48½	165.66	55.50
O'Connor & Co. (S)	do	do	13	290,400	51½	48½	87.12	29.03
Pressnall, J. H	Pearsall, Tex	do	6	132,000	51½	48½	39.60	13.56
Pressnal, P. A	do	do	2	44,000	51½	48½	13.20	4.37
Rachal, A. P	do	do	3	66,000	51½	48½	19.80	6.64
Roberts Bros. (C)	Derby, Tex	do	3	69,500	51½	48½	20.85	7.02
Schreiner & Halff. (S)	Pearsall, Tex	do	125	2,818,300	51½	48½	845.49	308.17
Shiner, M.K.&R.H. (S)	do	do	11	261,200	51½	48½	78.36	26.29
Spikes, I. H. (S)	Wills Point, Tex	do	12	264,000	42½	39½	79.20	26.61
Stubbs & Lamb. (S)	Wortham, Tex	do	4	88,000	44½	41½	26.40	8.84
Taylor, M. (S)	Pearsall, Tex	do	4	89,000	51½	48½	26.70	8.88
Thompson, W. H. (S)	do	do	4	88,000	51½	48½	26.40	8.84
Vicks, J. T. (S)	Altair, Tex	do	14	308,000	51½	48½	92.40	30.99
CLAIMS AGAINST ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, THE DELIVERING LINE IN EACH SHIPMENT.								
216 Allen, John. (S)	Kaufman, Tex	National Stock Yards, Ill	5	110,000	42½	39½	33.00	11.03
Allen & Mulkey. (S)	do	do	2	44,000	42½	39½	13.20	4.35
Allen, O. T. (S)	Talihina, Okla	do	7	154,000	37	29½	115.50	44.81
Ambrister Bros. (S)	Weleetka, Okla	Kansas City, Kans	4	88,000	27½	24½	26.40	10.46
Bailey & Townsend	Okmulgee, Okla	National Stock Yards, Ill	5	110,000	31	29	22.00	8.60
Baker & Brown	Ryan, Okla	do	2	44,000	42½	39½	13.20	4.26
Baker Bros. (S)	Tuttle, Okla	do	33	726,000	39	36	217.80	69.94
Baker & Strickler. (S)	do	Kansas City, Kans	64	1,408,000	39	36	422.40	
Do	do	do	40	880,000	31½	28	308.00	
			104	2,288,000	.....	.....	730.40	266.59

Baldridge, L. L. (S)	Red Fork, Okla.	National Stock Yards, Ill	13	286,000	30¼	27½	85.80	37.72
Baker & Wigglesworth (S)	Tuttle, Okla.	do	62	1,364,000	39	36	409.20	
Do	do	Kansas City, Kans.	48	1,056,000	31½	28	369.60	
			110	2,420,000			778.80	280.43
Barker, R. P. (S)	Beggs, Okla.	National Stock Yards, Ill	15	330,000	30¼	29	41.25	16.59
Barker & Thompson. (S)	do	do	2	44,000	30¼	29	5.50	2.13
B. G. Barnes, Mgr., Indio Cattle Co. (S)	do	do	26	572,000	30¼	29	71.50	23.96
M. C. Barnes & Son. (S)	Scullin, Okla.	do	7	154,000	41	38	46.20	
Do	Davis, Okla.	do	4	88,000	41	38	26.40	
			11	242,000			72.60	26.25
Barnes, M. M. (S)	Amber, Okla.	do	6	132,000	39½	36	46.20	18.14
Barrett, M. H. (S)	Ryan, Okla.	do	5	110,000	42½	39½	33.00	13.04
Barringer, J. L. (S)	Ada, Okla.	do	3	66,000	40½	37½	19.80	
Do	do	do	3	66,000	40	37½	16.50	
			6	132,000			36.30	13.77
Barringer, W. M.	do	Kansas City, Kans.	2	44,000	32½	29½	13.20	4.48
Batte, R. L. (S)	Cameron, Tex.	National Stock Yards, Ill	2	44,000	48½	45½	13.20	5.37
217 Battles & Denton.	Red Oak, Okla.	do	6	132,000	37	29	105.60	
Do	Cameron, Okla.	do	2	44,000	29	24½	19.80	
			8	176,000			125.40	39.97
Battles, G. W.	Stuart, Okla.	do	5	110,000	39	36	33.00	12.85
Beattie & Witherspoon (S)	Scullin, Okla.	do	6	132,000	41	38	39.60	
Do	do	do	7	154,000	41	38	46.20	
Do	do	Kansas City, Kans.	7	154,000	34	30½	50.05	

CLAIMS AGAINST ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.
THE DELIVERING LINE IN EACH SHIPMENT.—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Beattie & Witherspoon (S)	Scullin, Okla	do	1	22,000	34	30½	$ 7.15	
			21	462,000			143.00	$ 46.78
Bedwell, J. A. (S)	Holdenville, Okla	do	2	44,000	31	28	13.20	4.37
Beeler, F. G. (S)	Scullin, Okla	do	11	242,000	34	30½	78.65	
Do	do	National Stock Yards, Ill	6	132,000	41	38	39.60	
			17	374,000			118.25	39.24
Belshe, F. N.	Chickasha, Okla	Kansas City, Kans	1	22,000	32½	29	7.70	
Do	Laverty, Okla	do	1	22,000	33	29½	7.70	
			2	44,000			15.40	5.05
Bilby, N. V. (S)	Ryan, Okla	National Stock Yards, Ill	2	44,000	42½	39½	13.20	4.30
Blocker & Johnson. (S)	Comanche, Okla	do	19	418,000	41½	38	135.85	44.63
Blocker, J. R. (S)	Vinita, Okla	do	9	198,000	25½	25½	9.90	3.27
Bobbitt, A. A. (estate) (S)	Ada, Okla	do	2	44,000	40	37½	11.00	3.58
Boedecker & Ball	Bowie, Tex	do	3	66,000	42½	39½	19.80	8.06
Borden, A. P., exec. (S)	Pierce, Tex	do	4	88,000	51½	48½	26.40	11.42
Bourland-Barefoot L. S. Com. Co. (S)	Arapahoe, Okla	Kansas City, Kans	6	132,000	31	28	39.60	16.97
Brown & Biggerstaff	Beggs, Okla	National Stock Yards, Ill	11	242,000	30½	29	30.25	11.84
Brown, T. J	Mounds, Okla	do	15	330,000	29½	29	8.25	3.15
Brownwood Oil Mill. (S)	Brownwood, Tex	do	103	2,266,000	45½	42½	679.80	276.58
Buchanan, S. H. (S)	Beggs, Okla	do	13	286,000	30½	29	35.75	11.55
Bucholtz, J. M. (S)	Madill, Okla	Kansas City, Kans	5	110,000	35½	30¾	42.25	21.49

Buel, Pryor & Daniels. (S)	Okmulgee, Okla	National Stock Yards, Ill	86	1,892,000	31	29	378.40	
Do	Schulter, Okla	do	9	198,000	33	30	59.40	
			95	2,090,000			437.80	169.37
Burnett, C., & Co. (S)	Ryan, Okla	do	8	176,000	42½	39½	52.80	17.18
Burnett, T. L	Addington, Okla	do	11	242,000	41½	38	84.70	30.48
Cage Cattle Co. (S)	Beggs, Okla	do	33	726,000	30¼	29	90.75	39.75
Cain & Kelley	Henryetta, Okla	do	3	66,000	34¾	30	31.35	
Do	Okmulgee, Okla	do	4	88,000	31	29	17.60	
			7	154,000			48.95	16.92
Carrow, R. (S)	Bowie, Tex	National Stock Yards, Ill	8	176,000	42½	39½	52.80	21.93
Cartwright, Matthew. (S)	Kaufman, Tex	do	33	726,000	42½	39½	217.80	77.89
Cherryholm, T. H. (S)	Jacksboro, Tex	do	3	66,000	42½	39½	19.80	7.21
Chilton & Wilis. (S)	Mounds, Okla	do	9	198,000	29½	29	4.95	2.16
Chism, Thos	Beggs, Okla	do	7	154,000	30¼	29	19.25	7.48
Clark, P. R	San Angelo, Tex	do	2	44,000	49	46	13.20	4.20
Clotfelter, J. H. (C)	Schulter, Okla	Kansas City, Kans	6	152,000	25	22½	33.00	
Do	do	National Stock Yards, Ill	15	350,000	33	30	99.00	
			21	482,000			132.00	49.86
Cloudt, F. (S)	do	do	36	792,000	33	30	237.60	76.22
Cobb, J. K. & Co. (S)	Mill Creek, Okla	do	4	88,000	41	38	26.40	8.67
Cochran & Roff. (C)	Roff, Okla	do	11	242,000	41	38	72.60	23.79
Coffman, W. L. (S)	Mounds, Okla	do	8	176,000	29¼	29	4.40	1.84
Corbin, W. W. (S)	Scullin, Okla	do	1	22,000	41	38	6.60	
Do	Mill Creek, Okla	do	3	66,000	41	38	19.80	
			4	88,000			26.40	9.53
Corn, J. W. (S)	Plover, Tex	do	1	22,000	42½	39½	6.60	
Do	Weleetka, Okla	do	24	528,000	36¼	32½	198.00	
Do	do	Kansas City, Kans	18	396,000	27½	24½	118.80	

CLAIMS AGAINST ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Do	Chandler, Okla	do	10	220,000	31	27½	77.00	
			53	1,166,000			400.40	151.35
Cassidy, Courtney & Doerr. (S)	Beggs, Okla	National Stock Yards, Ill	59	1,298,000	30½	29	162.25	
Do	Mill Creek, Okla	do	13	286,000	41	38	85.80	
Do	Beggs, Okla	Kansas City, Kans	6	132,000	21½	21	6.60	
			78	1,716,000			254.65	88.88
Crawford, J. P. (S)	Cordell, Okla	do	10	220,000	33	30½	55.00	21.44
Crider & Russell. (S)	Mounds, Okla	National Stock Yards, Ill	3	66,000	29½	29	1.65	.71
Cummings, A. M. (S)	Stuart, Okla	do	3	66,000	39	36	19.80	6.55
Cummings, C. M. (S)	do	do	1	22,000	39	36	6.60	
Do	Calvin, Okla	do	1	22,000	39	36	6.60	
			2	44,000			13.20	4.33
Cummings&Moode. (S)	Stuart, Okla	do	9	198,000	39	36	59.40	19.32
Davis Bros. (S)	Tuskahoma, Okla	Kansas City, Kans	3	66,000	33	29½	23.10	
Do	Olney, Okla	National Stock Yards, Ill	5	110,000	39½	33	16.50	
Do	Scullin, Okla	do	1	22,000	41	38	6.60	
Do	Coalgate, Okla	do	5	110,000	40½	38	27.50	
Do	Tuskahoma, Okla	do	6	132,000	39	35	32.80	
			20	440,000			126.50	55.41

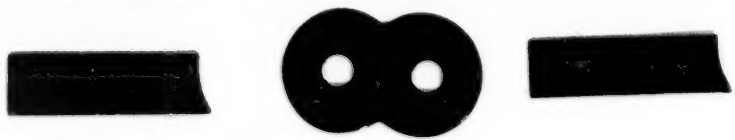
Davis & Jennings. (S)	Duncan, Okla	do	66	1,452,000	41¼	38	471.90	
Do	Comanche. Okla	do	2	44,000	41¼	38	14.30	
			68	1,496,000			486.20	157.37
Davis, R. L. (8)	Madill, Okla	Kansas City, Kans	2	44,000	35½	30¾	20.90	8.90
Davis, W. L. (S)	Addington, Okla	National Stock Yards, Ill	4	88,000	41½	38	30.80	10.13
Dublin Cotton Oil Co. (8)	Dublin, Tex	do	62	1,364,000	44½	41½	409.20	166.64
Dumas, J. D. (8)	Wapanucka, Okla	do	1	22,000	39½	38	3.30	1.45
Durant, Tom	Beggs, Okla	do	8	176,000	30¾	29	22.00	9.68
Dykes, W. L. (8)	Tishimingo, Okla	do	3	66,000	39½	38	9.90	
Do	Mill Creek, Okla	do	1	22,000	41	38	6.60	
			4	88,000			16.50	6.92
Eaton, J. R. (8)	Ladonia, Tex	do	14	308,000	42½	39½	92.40	37.95
Elliott, Lee. (8)	Talihina, Okla	do	5	110,000	37	29½	82.50	33.78
Elliott, S. H	Schulter, Okla	do	7	154,000	33	30	46.20	19.32
Evans, R. M	Stuart, Okla	do	3	66,000	39	36	19.80	6.34
Eggleman, C. J	Kaufman, Tex	do	3	66,000	42½	39½	19.80	6.67
French, M. N. (8)	Tuttle, Okla	do	15	330,000	39	36	99.00	37.39
French, W. A. (8)	Kaufman, Tex	do	2	44,000	42½	39½	13.20	4.47
Friend, J.W.,&Son. (8)	Beggs, Okla	do	8	176,000	30¾	29	22.00	8.29
Gatewood, F. W. (8)	Mill Creek, Okla	do	5	110,000	41	38	33.00	12.79
Gatewood, R. E. (8)	Tuttle, Okla	do	14	308,000	39	36	92.40	31.44
Gibson & Edwards Bros. (8)	Beggs, Okla	Kansas City, Kans	12	264,000	21½	21	13.20	5.74
Glasscock&Barksdale (8)	do	do	7	154,000	21½	21	7.70	
Do	do	National Stock Yards, Ill	9	198,000	30¾	29	24.75	
			16	352,000			32.45	10.35
Glasscock, W. A. (8)	do	Kansas City, Kans	8	176,000	21½	21	8.80	2.83
Graham, J. W. (8)	Scullin, Okla	do	43	946,000	34	30¾	307.45	
Do	Mill Creek, Okla	National Stock Yards, Ill	1	22,000	41	38	6.60	

CLAIMS AGAINST ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Graham, J. W. (S)	Mill Creek, Okla	Kansas City, Kans	2	44,000	34	30½	$ 14 30	
Do	Scullin, Okla	National Stock Yards, Ill	2	44,000	41	38	13 20	
			48	1,056,000			341.55	$129 56
Gregg Bros. (S)	Ada, Okla	National Stock Yards, Ill	5	110,000	40	37½	27 50	
Do	do	Kansas City, Kans	2	44,000	33½	29½	17 60	
220			7	154,000			45.10	14.95
Hall, R. I	Stuart, Okla	National Stock Yards, Ill	3	66,000	39	36	19 80	6 38
Hamilton, J. R	San Angelo, Tex	do	3	66,000	49	46	19 80	6 63
Harness, J. H. (S)	Chickasha, Okla	do	3	66,000	40	36	26 40	8 77
Harrold & Barnes. (S)	Tuttle, Okla	do	2	44,000	31½	28	15 40	
Do	Amber, Okla	do	7	154,000	39½	36	53 90	
Do	Wynnewood, Okla	do	29	638,000	41	38	191 40	
			38	836,000			260 70	110 15
Haynes & Hogenkamp	Okmulgee, Okla	do	6	132,000	31	29	26 40	10 53
Hensley & Brummitt	Addington, Okla	do	9	198,000	41½	38	68 30	22 61
Hodges & Payne	Mill Creek, Okla	do	27	594,000	41	38	178 20	57 35
Holder & Graham. (S)	Scullin, Okla	Kansas City, Kans	2	44,000	34	30½	14 30	4.72
Holder, R. B. (S)	do	do	2	44,000	34	30½	14 30	
Do	Mill Creek, Okla	do	1	22,000	34	30½	7 15	
			3	66,000			21 45	7 06

Holdman, J. C. (S)	Stuart, Okla	National Stock Yards, Ill	3	66,000	39	36	19.80	6.31
Holdridge & Lovelady. (S)	Beggs, Okla	do	8	176,000	30¼	29	22.00	8.34
Holt, J. T. (S)	Honey Grove, Tex	do	23	506,000	42½	39½	151.80	61.58
Hubbard, C. D. (S)	Comanche, Okla	do	11	242,000	41¼	38	78.65	29.31
			16	352,000	39	36	105.60	
Huffman, H. L. (S)	Holdenville, Okla	do	1	22,000	31	28	6.60	
Do	do	Kansas City, Kans	17	374,000			112.20	42.12
Ingram, J. T. (C)	Woodville, Okla	National Stock Yards, Ill	4	88,000	42	39	26.40	8.63
Inman & Thompson. (S)	Chickasha, Okla	Kansas City, Kans	2	44,000	32½	29	15.40	6.25
Inman, Wm. (S)	do	do	3	66,000	32½	29	23.10	9.43
Irvine & Mills. (S)	Beaumont, Tex	National Stock Yards, Ill	10	220,000	95.35	[1]88.75	66.00	22.35
Jackson, G. W	Wapanucka, Okla	do	2	44,000	39.50	38	6.60	2.89
Jackson, R. H	Holdenville, Okla	Kansas City, Kans	7	154,000	31	28	46.20	15.18
James & Cardin	Mill Creek, Okla	National Stock Yards, Ill	2	44,000	41	38	13.20	4.31
James & Jamison	do	do	15	33,000	41	38	99.00	32.07
Jennings & Green. (S)	do	do	4	88,000	41	38	26.40	11.52
			10	220,000	41¼	38	71.50	
Jennings, W. H. (C)	Comanche, Okla	do	6	132,000	41¼	38	42.90	
Do	Duncan, Okla	do	16	352,000			114.40	43.36
221								
Johns, E. F. & Thos. (S)	Chickasha, Okla	Kansas City, Kans	12	264,000	32½	29	92.40	37.40
Johnson, J. A. (S)	Quanah, Tex	do	8	176,000	36½	33½	52.80	19.53
Kapp, H. (S)	Rush Springs, Okla	National Stock Yards, Ill	23	500,000	41	37½	177.10	56.52
Keith, G. J. (S)	Addington, Okla	do	6	132,000	41½	38	46.20	17.83
Keith, J. L. (S)	do	do	4	88,000	41½	38	30.80	10.00
			2	44,000	30¼	29	5.50	
Kelley, J. E	Beggs, Okla	do	1	22,000	31	29	4.40	
Do	Okmulgee, Okla	do	3	66,000			9.90	4.17
Kennedy, L. W. (S)	Beggs, Okla	Kansas City, Kans	3	66,000	21½	21	3.30	

[1]Dollars per car.



CLAIMS AGAINST ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, THE DELIVERING LINE IN EACH SHIPMENT.—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Kennedy, L. W. (S)	Beggs, Okla	National Stock Yards, Ill	3	66,000	30½	29	$8.25	
			6	132,000			11.55	$3.94
Kerley, H. A. (S)	Addington, Okla	do	2	44,000	41½	38	15 40	5.13
Kimble & Co	Beggs, Okla	do	1	22,000	30½	29	2 75	
Do	Mounds, Okla	do	1	22,000	29½	29	.55	
			2	44,000			3.30	1.29
King Bros	Terrell, Tex	do	1	22,000	42½	39½	6.60	2.02
King, Mrs. H. M	Scullin, Okla	do	36	792,000	41	38	237 60	
Do	Mill Creek, Okla	do	12	264,000	41	38	79.20	
Do	Ravia, Okla	do	17	374,000	41½	38	130.90	
			65	1,430,000			447.70	144.27
Knox, J. W. (S)	Jacksboro, Tex	do	25	550,000	42½	39½	165.00	
Do	do	Kansas City, Kans	5	110,000	36½	33½	33.00	
			30	660,000			198.00	78.21
Kuykendall, J. O. (S)	Mill Creek, Okla	National Stock Yards, Ill	9	198,000	41	38	59.40	26.26
Lance & Charley	Scullin, Okla	do	5	110,000	41	38	33.00	10.80
Lebo & Dykes. (S)	Mill Creek, Okla	do	7	154,000	41	38	46.20	15.88
Lewis, J. M. (S)	Ryan, Okla	do	9	198,000	42½	39½	59.40	19.65
Lindsay&Witherspoon (S)	Scullin, Okla	Kansas City, Kans	2	44,000	34	30¾	14.30	4.72
Livingston&Baldridge (S)	Henryetta, Okla	National Stock Yards, Ill	33	726,000	34¾	30	344.85	115 30
McKenzie&Ferguson. (S)	Mill Creek, Okla	do	30	660,000	41	38	198.00	64.68

Major, L. D. (S)	Ardmore, Okla	National Stock Yards, Ill	25	550,000	41¼	38	192.50	
Do	Ryan, Okla	do	28	616,000	42¼	39¼	184.80	
222			53	1,166,000			377.30	143.25
March Bros. (S)	Schulter, Okla	do	8	176,000	33	30	52.80	20.36
Martin, J. D. M. (S)	Comanche, Okla	do	10	220,000	41¼	38	71.50	23.16
Martin, J. W. (C)	do	do	11	242,000	41¼	38	78.65	25.73
May, R. L. (S)	Scullin, Okla	do	10	220,000	41	38	66.00	
Do	Roff, Okla	do	1	22,000	41	38	6.60	
Do	Scullin, Okla	Kansas City, Kans	4	88,000	34	30½	28.60	
			15	330,000			101.20	33.49
Melton & Hodge. (S)	Bowie, Tex	National Stock Yards, Ill	5	110,000	42½	39½	33.00	13.46
Melton & Spivey. (S)	do	do	13	286,000	42½	39½	85.80	82.26
Miller, Bluford. (S)	Beggs, Okla	do	10	220,000	30½	29	27.50	8.91
Miller Bros. (S)	Cooper, Tex	Kansas City, Kans	9	198,000	36½	33½	59.40	25.12
Miller & Hart. (S)	Beggs, Okla	National Stock Yards, Ill	35	770,000	30½	29	96.25	31.08
Mitchell & Co. (S)	Okmulgee, Okla	do	3	66,000	31	29	13.20	5.23
Mitchell, G. W. (S)	Schulter, Okla	do	27	594,000	33	30	178.20	69.05
Mitchell&Parkinson. (S)	do	do	3	66,000	33	30	19.80	8.71
Mitchell-Selfridge&Co(S)	do	do	30	660,000	33	30	198.00	87.09
Monks, W. C. (S)	Cameron, Okla	do	9	198,000	29	24½	89.10	28.11
Moore, T. J. (S)	Beggs, Okla	do	30	660,000	30½	29	82.50	26.25
Moore, W. S., & Co. (S)	Okmulgee, Okla	do	1	22,000	31	29	4.40	1.41
Morgan, D. (S)	Antlers, Okla	do	8	176,000	40	36	70.40	30.96
Moss, E. J. (S)	Scullin, Okla	do	20	440,000	41	38	32.00	43.03
Murrell & Clary	do	Kansas City, Kans	3	66,000	34	30½	21.45	9.29
Newton, W. T. (S)	Okmulgee, Okla	National Stock Yards, Ill	4	88,000	31	29	17.60	6.96
Oliphant, Alex. (S)	Holdenville, Okla	Kansas City, Kans	5	110,000	31	28	33.00	
Do	do	National Stock Yards, Ill	4	88,000	39	36	26.40	
			9	198,000			59.40	19.74
Orton, O. G. (S)	Ryan, Okla	do	14	308,000	42½	39½	92.40	31.46
Parkinson, J. M. (S)	Okmulgee, Okla	do	4	88,000	31	29	17.60	6.89

CLAIMS AGAINST ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY,
THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Parkinson, Jas.& T. A.(S)	Beggs, Okla	Kansas City, Kans	1	22,000	21½	21	[$1.10	$ .47
Payne, W. L., & Son	Mill Creek, Okla	National Stock Yards, Ill	35	770,000	41	38	231.00	
Do	do	Kansas City, Kans	2	44,000	34	30½	14.30	
223			37	814,000			245.30	78.91
Peery, Tom. (S)	Cement, Okla	do	7	154,000	33½	29½	61.60	
Do	Tuttle, Okla	do	4	88,000	31½	28	30.80	
			11	242,000			92.40	34.90
Penner, Felix. (S)	Mill Creek, Okla	do	6	132,000	34	30½	42.90	
Do	do	National Stock Yards, Ill	57	1,254,000	41	38	376.20	
			63	1,386,000			419.10	161.50
Perkins & Todd. (S)	Okmulgee, Okla	do	17	374,000	31	29	74.80	24.18
Pickens, J. J	Holdenville, Okla	Kansas City, Kans	1	22,000	31	28	6.60	2.13
Pierce & Kelley. (S)	Midlothian, Tex	National Stock Yards, Ill	6	132,000	42½	39½	39.60	13.93
Pincham & Kirtley. (S)	Welcetka, Okla	Kansas City, Kans	2	44,000	27½	24½	13.20	
Do	Henryetta, Okla	National Stock Yards, Ill	9	198,000	34½	30	94.05	
Do	Wetumka, Okla	do	1	22,000	37½	34	8.25	
Do	Welcetka, Okla	do	4	88,000	36½	32½	33.00	
			16	352,000			148.50	56.10
Price, J. S. & H. (S)	Addington, Okla	do	8	176,000	41½	38	61.60	23.84
Rawley, Dan. (S)	Okmulgee, Okla	do	9	198,000	31	29	59.60	14.25
Rich, J. R. (S)	Jacksboro, Tex	Kansas City, Kans	3	66,000	36½	33½	19.80	6.65

Richards, W. D. (S)	Ryan, Okla	National Stock Yards, Ill	7	154,000	42½	39½	46.20	15.03
Roff, J. C., & Son. (C)	Roff, Okla	do	14	308,000	41	38	92.40	36.11
Russell & Hubbard. (S)	Comanche, Okla	do	6	132,000	41¼	38	42.90	14.09
Sacra, J. B. (S)	Amber, Okla	Kansas City, Kans	2	44,000	32	29	13.20	4.26
Scannell & Patterson. (S)	Elk, Okla	National Stock Yards, Ill	10	220,000	39½	36½	66.00	26.44
Scott, Edward. (C)	Holdenville, Okla	do	1	22,000	39	36	6.60	2.19
Seay Bros. (C)	Ryan, Okla	do	3	66,000	42½	39½	19.80	6.56
Sellman, R. (S)	Beggs, Okla	Kansas City, Kans	15	330,000	21½	21	16.60	
Do	do	National Stock Yards, Ill	9	198,000	30¼	29	24.75	
			24	528,000			41.25	13.88
Severs, F. B	Okmulgee, Okla	do	8	176,000	31	29	35.20	11.35
Shaw, F. M. (S)	Schulter, Okla	do	26	572,000	33	30	171.60	65.08
Shaw & Jennings. (S)	Comanche, Okla	do	6	132,000	41¼	38	42.90	
Do	Duncan, Okla	do	20	440,000	41¼	38	143.00	
			26	572,000			185.90	60.37
Stine, J. H. (S)	Amber, Okla	Kansas City, Kans	54	1,188,000	32	29	356.40	
Do	Tuttle, Okla	do	14	308,000	31½	28	107.80	
224								
			68	1,496,000			464.20	177.82
Slator, J. M., & Sons. (S)	Scullin, Okla	National Stock Yards, Ill	45	990,000	41	38	297.00	95.49
Smith, B. P. (S)	Tuttle, Okla	Kansas City, Kans	8	176,000	31½	28	61.60	27.01
Smith, T. J	do	do	7	154,000	31½	28	53.90	21.98
South & Johnson. (S)	Ravia, Okla	National Stock Yards, Ill	3	66,000	41½	38	23.10	7.46
South, P. W. (S)	Mill Creek, Okla	do	11	242,000	41	38	72.60	
Do	do	Kansas City, Kans	4	88,000	34	30¾	28.60	
			15	330,000			101.20	36.05
Spring, A. A., & Son. (S)	Sugden, Okla	National Stock Yards, Ill	4	88,000	42	39	26.40	10.43
Stewart, Cal	Scullin, Okla	do	5	110,000	41	38	33.00	14.58
Stroud, T. (S)	do	do	17	374,000	41	38	112.20	36.38

CLAIMS AGAINST ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Stubblefield, R. W.	Scullin, Okla.	National Stock Yards, Ill	3	66,000	41	38	19.80	6.49
Sutherland, G.W. & Co. (8)	Beggs, Okla.	do	10	220,000	30½	29	27.50	
Do	Red Fork, Okla.	do	14	308,000	30½	27½	92.40	
			24	528,000			119.90	52.70
Taliaferro, D. B. (8)	Madill, Okla.	do	20	440,000	41½	38	154.00	51.00
Taylor, A. C. (8)	Mill Creek, Okla.	do	4	88,000	41	38	26.40	8.37
Templeton & Oliphant. (8)	Hoklenville, Okla.	Kansas City, Kans.	3	66,000	31	28	19.80	8.51
Thompson Bros. (8)	Beggs, Okla.	do	21	462,000	21½	21	23.10	
Do	Henryetta, Okla.	do	2	44,000	26	22½	15.40	
Do	Beggs, Okla.	National Stock Yards, Ill	35	770,000	30½	29	96.25	
			58	1,276,000			134.75	56.53
Thompson & Gibson. (8)	do	Kansas City, Kans.	18	396,000	21½	21	19.80	
Do	do	National Stock Yards, Ill	31	682,000	30½	29	85.25	
			49	1,078,000			105.05	33.60
Thompson, U. S. (8)	do	do	11	242,000	30½	29	30.25	10.48
Thompson, Wm. & R. B. (8)	do	do	23	506,000	30½	29	63.25	20.52
Three Circle Ranch	Bluffdale, Tex.	do	4	88,000	44½	41½	26.40	11.72
Todd, J. S. (8)	San Angelo, Tex.	do	2	44,000	49	46	13.20	
Do	Okmulgee, Okla.	do	19	418,000	31	29	83.60	
225			21	426,000			96.80	33.03

Trout, N. T.	Roff, Okla	Kansas City, Kans	2	44,000	34	30½	14.30	4.65
Vale, J. M. (C)	Seullin, Okla	do	16	352,000	34	30½	114.40	45.27
Vincent, Frank	do	do	6	132,000	34	30½	42.90	13.05
Waggoner, W. T. (S)	Bowie, Tex	National Stock Yards, Ill	6	132,000	42½	39½	39.60	16.50
Wall & McLish	Ravia, Okla	do	6	132,000	41½	38	46.20	15.32
Warren, O. G	Ardmore, Okla	do	8	176,000	41½	38	61.60	25.07
Washington & Davidson (S)	Addington, Okla	do	36	792,000	41½	38	277.20	121.05
Watson, Wm	Beggs, Okla	do	58	1,276,000	30½	29	159.50	
Do	do	Kansas City, Kans	11	242,000	21½	21	12.10	
			69	1,518,000			171.60	57.58
Webb, Sidney. (S)	Addington, Okla	National Stock Yards, Ill	191	4,202,000	41½	38	1,470.70	
Do	Bowie, Tex	do	52	1,144,000	42½	39½	343.20	
Do	Ryan, Okla	do	10	220,000	42½	39½	66.00	
			253	5,566,000			1,879.90	677.07
Weleetka Cattle Co. (S)	Weleetka, Okla	do	12	264,000	36½	32½	99.00	41.58
Westheimer & Daube. (S)	Ardmore, Okla	do	3	66,000	41½	38	23.10	
Do	Mill Creek, Okla	do	58	1,276,000	41	38	382.80	
Do	Tishomingo, Okla	do	43	946,000	41	38	283.80	
			104	2,288,000			689.70	261.98
Whatley, W. W. (S)	Honey Grove, Tex	do	10	220,000	42½	39½	66.00	26.69
Wiggs & Woody. (S)	Madill, Okla	Kansas City, Kans	5	110,000	35½	30½	52.25	
Do	do	National Stock Yards, Ill	9	198,000	41½	38	69.30	
			14	309,000			121.55	49.29
Willis, H	Seullin, Okla	do	4	88,000	41	38	26.40	8.53
Wilson, C. W. (S)	Schulter, Okla	do	10	220,000	33	30	66.00	27.78
Wilson & Selfridge. (S)	do	do	72	1,584,000	33	30	475.20	157.29
Winters, M. R. (S)	Tuskahoma, Okla	do	3	66,000	36	35	6.60	2.57

CLAIMS AGAINST ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, THE DELIVERING LINE IN EACH SHIPMENT—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
			No.	*Pounds.*	*Cents.*	*Cents.*		
Wise & Autrey. (S)	Holdenville, Okla	Kansas City, Kans	19	418,000	31	28	$125.40	
Do	Wetumka, Okla	do	5	110,000	27½	24½	33.00	
			24	528,000			158.40	$65.28
Witherspoon, J. F. (S)	Scullin, Okla	Kansas City, Kans	36	792,000	34	30½	257.40	
Do	Mill Creek, Okla	do	6	132,000	34	30½	42.90	
Do	Scullin, Okla	National Stock Yards, Ill	22	484,000	41	38	145.20	
			64	1,408,000			445.50	169.07
Woods Lee. (S)	do	do	38	836,000	41	38	250.80	
Do	Kingston, Okla	do	5	110,000	41	38	33.00	
			43	946,000			283.80	113.42
Woods, W. B	Stuart, Okla	do	3	66,000	39	36	19.80	6.50
Wynne, J. A	Scullin, Okla	do	7	154,000	41	38	46.20	14.89
Yahola Farm & Stock Co.	Beggs, Okla	do	5	110,000	30½	29	13.75	4.44
Young, G. W. (S)	Mill Creek, Okla	do	6	132,000	41	38	39.60	12.93

CLAIM AGAINST TEXAS & PACIFIC RAILWAY COMPANY, THE DELIVERING LINE.

Saunders, T. B. (S)	Fort Worth, Tex	New Orleans, La	35	770,000	42½	39½	231.00	97.94

207 *Order.*

At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 12th day of January, A. D. 1914.

No. 732.

CATTLE RAISERS' ASSOCIATION OF TEXAS

vs.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY et al.

This case coming on to be further heard upon prayer for reparation, and having been duly submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof made and filed a supplemental report containing its findings of fact and conclusions thereon, which said supplemental report is hereby referred to and made a part hereof:

It is ordered and directed, That The Atchison, Topeka & Santa Fe Railway Company, on or before June 15, 1914, pay to E. B. Spiller the amounts to which the said Spiller, as assignee, is entitled as reparation and interest thereon under the said report with respect to the several shipments named in said report in case of which the freight money was paid to the said Atchison, Topeka & Santa Fe Railway Company as therein shown, being in the aggregate the sum of $27,832.60 principal and $10,459.42 interest.

It is further ordered and directed, That the Chicago & Eastern Illinois Railroad Company, on or before June 15, 1914, pay to E. B. Spiller the amounts to which the said Spiller, as assignee, is entitled as reparation and interest thereon under the said report with respect to the several shipments named in said report in case of which the freight money was paid to the said Chicago & Eastern Illinois Railroad Company as therein shown, being in the aggregate the sum of $1,360.02 principal and $470.47 interest.

It is further ordered and directed, That The Chicago & Alton Railroad Company, on or before June 15, 1914, pay to E. B. Spiller the amounts to which the said Spiller, as assignee, is entitled as reparation and interest thereon under the said report with respect to the several shipments named in said report in case of which the freight money was paid to the said Chicago & Alton Railroad Company as therein shown, being in the aggregate the sum of $572.79 principal and $189.70 interest.

208 It is further ordered and directed, That The Chicago, Rock Island & Pacific Railway Company, on or before June 15, 1914, pay to E. B. Spiller the amounts to which the said Spiller, as assignee, is entitled as reparation and interest thereon under the said report with respect to the several shipments named

in said report in case of which the freight money was paid to the said Chicago, Rock Island & Pacific Railway Company as therein shown, being in the aggregate the sum of $13,218.16 principal and $4,821.81 interest.

It is further ordered and directed, That the Illinois Central Railroad Company, on or before June 15, 1914, pay to E. B. Spiller the amounts to which the said Spiller, as assignee, is entitled as reparation and interest thereon under the said report with respect to the several shipments named in said report in case of which the freight money was paid to the said Illinois Central Railroad Company as therein shown, being in the aggregate the sum of $1,536.93 principal and $592.03 interest.

It is further ordered and directed, That the Missouri, Kansas & Texas Railway Company, on or before June 15, 1914, pay to E. B. Spiller the amounts to which the said Spiller, as assignee, is entitled as reparation and interest thereon under the said report with respect to the several shipments named in said report in case of which the freight money was paid to the said Missouri, Kansas & Texas Railway Company as therein shown, being in the aggregate the sum of $39,777.74 principal and $15,002.17 interest.

It is further ordered and directed, That The Missouri Pacific Railway Company, on or before June 15, 1914, pay to E. B. Spiller the amounts to which the said Spiller, as assignee, is entitled as reparation and interest thereon under the said report with respect to the several shipments named in said report in case of which the freight money was paid to the said Missouri Pacific Railway Company as therein shown, being in the aggregate the sum of $224.81 principal and $86.15 interest.

It is further ordered and directed, That the St. Louis, Iron Mountain & Southern Railway Company, on or before June 15, 1914, pay to E. B. Spiller the amounts to which the said Spiller, as assignee, is entitled as reparation and interest thereon under the said report with respect to the several shipments named in said report in case of which the freight money was paid to the said St. Louis, Iron Mountain & Southern Railway Company as therein shown, being in the aggregate the sum of $2,736.35 principal and $958.51 interest.

It is further ordered and directed, That the St. Louis & San Francisco Railroad Company, on or before June 15, 1914,
209 pay to E. B. Spiller the amounts to which the said Spiller, as assignee, is entitled as reparation and interest thereon under the said report with respect to the several shipments named in said report in case of which the freight money was paid to the said St. Louis & San Francisco Railroad Company as therein shown, being in the aggregate the sum of $20,211.95 principal and $7,470.80 interest.

It is further ordered and directed, That The Texas & Pacific Railway Company, on or before June 15, 1914, pay to E. B. Spiller the amounts to which the said Spiller, as assignee is entitled as reparation and interest thereon under the said report with respect to the several shipments named in said report in case of which the freight money was paid to the said Texas & Pacific Railway Company, as therein

shown, being in the aggregate the sum of $231 principal and $97.94 interest.

It is further ordered and directed, That The Atchison, Topeka & Santa Fe Railway Company, on or before June 15, 1914, pay to each of the persons named as consignor in said report whose claims have not been assigned to E. B. Spiller or to H. E. Crowley, and by him to E. B. Spiller, as appears from said report, the amount of reparation and interest thereon to which said consignor is entitled, according to the terms of said report, with respect to all those shipments in case of which the freight money was paid by said consignor to The Atchison, Topeka & Santa Fe Railway Company.

It is further ordered and directed, That the Chicago & Eastern Illinois Railroad Company, on or before June 15, 1914, pay to each of the persons named as consignor in said report whose claims have not been assigned to E. B. Spiller or to H. E. Crowley, and by him to E. B. Spiller, as appears from said report, the amount of reparation and interest thereon to which said consignor is entitled, according to the terms of said report, with respect to all those shipments in case of which the freight money was paid by said consignor to the Chicago & Eastern Illinois Railroad Company.

It is further ordered and directed, That The Chicago & Alton Railroad Company, on or before June 15, 1914, pay to each of the persons named as consignor in said report whose claims have not been assigned to E. B. Spiller or to H. E. Crowley, and by him to E. B. Spiller, as appears from said report, the amount of reparation and interest thereon to which said consignor is entitled, according
210 to the terms of said report, with respect to all those shipments in case of which the freight money was paid by said consignor to The Chicago & Alton Railroad Company.

It is further ordered and directed, That The Chicago, Rock Island & Pacific Railway Company, on or before June 15, 1914, pay to each of the persons named as consignor in said report whose claims have not been assigned to E. B. Spiller or to H. E. Crowley, and by him to E. B. Spiller, as appears from said report, the amount of reparation and interest thereon to which said consignor is entitled, according to the terms of said report, with respect to all those shipments in case of which the freight money was paid by said consignor to The Chicago, Rock Island & Pacific Railway Company.

It is further ordered and directed, That the Illinois Central Railroad Company, on or before June 15, 1914, pay to each of the persons named as consignor in said report whose claims have not been assigned to E. B. Spiller or to H. E. Crowley, and by him to E. B. Spiller, as appears from said report, the amount of reparation and interest thereon to which said consignor is entitled, according to the terms of said report, with respect to all those shipments in case of which the freight money was paid by said consignor to the Illinois Central Railroad Company.

It is further ordered and directed, That the Missouri, Kansas & Texas Railway Company, on or before June 15, 1914, pay to each of the persons named as consignor in said report whose claims have not been assigned to E. B. Spiller or to H. E. Crowley, and by him

to E. B. Spiller, as appears from said report, the amount of reparation and interest thereon to which said consignor is entitled, according to the terms of said report, with respect to all those shipments in case of which the freight money was paid by said consignor to the Missouri, Kansas & Texas Railway Company.

It is further ordered and directed, That The Missouri Pacific Railway Company, on or before June 15, 1914, pay to each of the persons named as consignor in said report whose claims have not been assigned to E. B. Spiller or to H. E. Crowley, and by him to E. B. Spiller, as appears from said report, the amount of reparation and interest thereon to which said consignor is entitled, according to the terms of said report, with respect to all those shipments in case of which the freight money was paid by said consignor to The Missouri Pacific Railway Company.

211 It is further ordered and directed, That the St. Louis, Iron Mountain & Southern Railway Company, on or before June 15, 1914, pay to each of the persons named as consignor in said report whose claims have not been assigned to E. B. Spiller or to H. E. Crowley, and by him to E. B. Spiller, as appears from said report, the amount of reparation and interest thereon to which said consignor is entitled, according to the terms of said report, with respect to all those shipments in case of which the freight money was paid by said consignor to the St. Louis, Iron Mountain & Southern Railway Company.

It is further ordered and directed, That the St. Louis & San Francisco Railroad Company, on or before June 15, 1914, pay to each of the persons named as consignor in said report whose claims have not been assigned to E. B. Spiller or to H. E. Crowley, and by him to E. B. Spiller, as appears from said report, the amount of reparation and interest thereon to which said consignor is entitled, according to the terms of said report, with respect to all those shipments in case of which the freight money was paid by said consignor to the St. Louis & San Francisco Railroad Company.

And it is further ordered and directed, That The Texas & Pacific Railway Company, on or before June 15, 1914, pay to each of the persons named as consignor in said report whose claims have not been assigned to E. B. Spiller or to H. E. Crowley, and by him to E. B. Spiller, as appears from said report, the amount of reparation and interest thereon to which said consignor is entitled, according to the terms of said report, with respect to all those shipments in case of which the freight money was paid by said consignor to The Texas & Pacific Railway Company.

By the Commission.

[SEAL.] GEORGE B. McGINTY, *Secretary.*

A True Copy.

[SEAL.] GEORGE B. McGINTY, *Secretary.*

Mr. Cowan: We also offer the original decision of the Commission, No. 732, the decision rendered on the re-opening of the case April 14, 1908, and the decision as to the rates on July 6, 1908—

those together with the order of the Commission ordering the payment of money. Now let me inquire, you do not claim that the money has been paid?

212 Mr. Norton: We admit that it has not been paid.

Mr. Cowan: You admit the service of the order?

Mr. Norton: Yes. Our answer admits everything, and renders this offer objectionable and we object to the offer of the decision by the Commission, the first and second decisions on the rate, because no rate question is involved here, and the fact is set up in their petition that these orders were rendered and we have admitted that the Commission did reduce the rates and did declare the rates unreasonably high, and subsequently ordered in rates for the future. The offer therefore is immaterial, and the decisions are incompetent and encumbering the record; they have no application to this secondary hearing on the award of reparation. Here is the record on which the Commission determined that the claimants here were entitled to reparation, and this is the whole of it, and we object to the decisions offered on the ground that they are absolutely incompetent, irrelevant and immaterial.

The Court: As the court said before, they will be received subject to the objections, and if the court finds under the pleadings they are immaterial, the court will protect the record against being unduly encumbered.

Mr. Morrow: I want to add to that objection, that the offer is not embraced in the petition.

Said documents offered in evidence by plaintiff, having been duly marked by the reporter as "Plaintiff's Exhibits 2, 3, and 4, G. W. S. 12/8/15" respectively, are filed herewith and made a part of this record with the same force and effect as though set out at length herein.

Mr. Cowan: Plaintiff rests.

Mr. Morrow: All of the defendants now ask the court to declare the law to be that upon the case presented and the evidence given, and the pleadings, the judgment ought to be for the defendants and each of them.

The Court: Very well. Ruling will be reserved on that.

Mr. Morrow: Considered as filed, I take it?

The Court: Yes.

Said documents now filed by defendants, being in words and figures as follows, to-wit:

213 In the District Court of the United States for the Western Division of the Western District of Missouri, November Term, 1915.

No. 4308.

E. B. SPILLER, Plaintiff,

vs.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY et al., Defendants.

At the close of plaintiff's evidence and upon accouncement of plaintiff's counsel that plantiff rested, each and all of the defendants requested the Court to declare the law to be that upon the plaintiff's own evidence he was not entitled to recover against any or all of the defendants.

In the District Court of the United States for the Western Division of the Western District of Missouri, November Term, 1915.

No. 4320.

E. B. SPILLER et al., Plaintiff-,

vs.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY et al., Defendants.

At the close of plaintiff's evidence and upon announcement of plaintiff's counsel that plaintiff rested, each and all of the defendants requested the Court to declare the law to be that upon the plaintiff's own evidence they were not entitled to recover against any or all of the defendants.

Thereupon testimony and discussion were introduced and had concerning a reasonable attorneys' fee to be allowed in the case if plaintiffs prevailed. This shown by transcript of the record from pages 10 to 34 inclusive, which are here by consent of all the parties omitted, with the understanding that no question is or will be raised and no assignment of error made as to the reasonableness of the attorneys' fee allowed by the court.

Mr. Cowan: Plaintiff rests.

Mr. Morrow: We renew, of course, our motion for a peremptory finding.

The Court: Very well.

Mr. Norton: If the court please, we offer as Defendants' Exhibit 1, offered on behalf of all the defendants, a copy of the testi-
214 mony taken by the Interstate Commerce Commission on the three hearings held with respect to reparation. This is certified by the Secretary of the Interstate Commerce Commission, but

aside from that fact, Mr. Cowan—I did not expect to have a certified copy—said that he would raise no objection on that score.

Mr. Deatherage: Is that a transcript of all the evidence?

Mr. Norton: Of the evidence on the reparation—the three reparation hearings, certified to. We offer that as Defendants' Exhibit No. 1.

Mr. Jamison: I understand, your honor, that if admitted, that that includes all the evidence heard by the Interstate Commerce Commission?

Mr. Cowan: We object to the introduction of that testimony on the ground that the Commission had this case before it, as shown by the decisions, already offered since 1904 and the Commission having made the order, the evidence before the Commission is not competent testimony before this court.

Mr. Norton: We have made the answer that the Commission was without evidence before it.

The Court: It will be received, subject to the objection and ruling reserved.

Said transcript of evidence now offered in evidence by Defendants, having been duly marked by the Reporter as "Defendants' Exhibit 1, G. W. S., 12/8/15," is filed herewith and made a part of this record, with the same force and effect as if set out at length herein. Said exhibit is in words and figures as follows:

DEFTS'. EX. 1.

G. W. S.

Interstate Commerce Commission,

Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the papers hereto attached are true copies of the transcript of the stenographer's notes of the hearings relative to reparation held September 19, 1912, at Chicago, Illinois, before Commissioner Prouty, January 24, 1913, at Chicago, Illinois, before Commissioner Prouty, and October 17, 1913, at Chicago, Illinois, before Commissioner Prouty, in case No. 732, The Cattle Raisers Association of Texas against The Missouri, Kansas & Texas Railway Company and others, the originals of which are now on file and of record in the office of this Commission.

215–216

In Testimony Whereof, I have hereunto subscribed my name, and affixed the seal of the Commission, this 15th day of December, 1914.

[SEAL.] GEORGE B. McGINTY,

Secretary of the Interstate Commerce Commission.

STENOGRAPHER'S MINUTES

BEFORE THE

Interstate Commerce Commission

Docket No. 732.

CATTLE RAISERS ASSOCIATION OF TEXAS,
COMPLAINANT,

VS.

THE MISSOURI, KANSAS AND TEXAS RAILWAY CO.
ET AL., DEFENDANT.

At Chicago, Illinois.

Date September 19, 1912 (First Hearing).
January 24, 1913 (Second Hearing).
October 17, 1913 (Third Hearing).

1

BEFORE THE
INTERSTATE COMMERCE COMMISSION.

Docket 732.

CATTLE RAISERS ASSOCIATION OF TEXAS,

VS.

THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY ET AL.

Chicago, Illinois, September 19, 1912. 10:00 o'clock A. M.

Before:

HON. CHARLES A. PROUTY, *Commissioner.*

Met pursuant to notice.

Appearances:

S. H. Cowan (Ft. Worth, Texas), appearing for Cattle Raisers Association of Texas.

C. S. Burg (St. Louis, Missouri), appearing for Missouri, Kansas & Texas Railway Company and The Missouri, Kansas & Texas Railway Company of Texas.

T. J. Norton (Railway Exchange Bldg., Chicago, Ill.), appearing for Atchison, Topeka & Santa Fe Railway Company.

O. W. Dynes (Chicago, Illinois), appearing for Chicago, Milwaukee & St. Paul Railway Company.

2 W. F. Dickinson and Wallace T. Hughes (1025 La Salle St. Station, Chicago, Illinois), appearing for The Chicago, Rock Island & Pacific Railway Company, and The Chicago, Rock Island & Gulf Railway Company.

C. C. Wright and A. H. Lossow (Chicago, Illinois), appearing for Chicago & North Western Railway Company.

Fred H. Wood (St. Louis, Missouri), appearing for Frisco Lines.

R. B. Scott and G. H. Crosby (226 West Adams St., Chicago, Illinois), appearing for Chicago, Burlington & Quincy Railroad Company, and Colorado & Southern Railway Company.

R. V. Fletcher and A. P. Humburg (135 Park Row, Chicago, Illinois), appearing for Illinois Central Railroad Company.

Fred G. Wright and Henry G. Herbel (604 Missouri Pacific Building, St. Louis, Missouri), appearing for Texas & Pacific Railway Company, International & Great Northern Railway Company, Missouri Pacific Railway Company, and St. Louis, Iron Mountain & Southern Railway Company.

H. A. Scandrett, J. R. Christian and James G. Wilson (112 West Adams St., Chicago, Ill.), appearing for Sunset Central Lines.

INDEX OF WITNESSES.

A. C. Williams 6

INDEX OF EXHIBITS.

Complainants Exhibit 1 (Witness Williams)
(To be forwarded to the Commission by Mr. Williams)

INFORMATION TO BE FURNISHED.

Explanation of exhibits by Mr. Williams 50

PROCEEDINGS.

Commissioner Prouty: We will take up next docket No. 732, Cattle Raisers Association of Texas, versus the Missouri, Kansas & Texas Railway Company et al.

Mr. Cowan: I understand, if Your Honor please, there are quite a number of gentlemen here representing some furniture case. I am desirous of accommodating them.

Commissioner Prouty: I am also desirous of accommodating them, Mr. Cowan, but this matter of yours I think finally will be handled very largely by some examiner, and I desire to determine at the outset the lines along which the determination of this reparation is to proceed. Those people who are here in the furniture case will be excused until half past two this afternoon. We will proceed now with the Cattle Raisers case. Mr. Cowan, you appear for the complainant?

Mr. Cowan: Yes, sir.

Commissioner Prouty: Is there any other appearance or any other complainant who claims reparation in this case?

Mr. Cowan: None at all.

Commissioner Prouty: What appearances are there for the defendants in the Cattle Raisers case?

5 Mr. Norton: T. J. Norton for the Santa Fe.

Mr. Burg: C. S. Burg for the M. K. & T.

Mr. Hughes: W. F. Dickinson and Wallace T. Hughes for the Chicago, Rock Island and Pacific Railway Company and The Chicago, Rock Island & Gulf Railway Company.

Mr. Lossow: C. C. Wright and A. H. Lossow for the Chicago & North Western.

Mr. Wright: F. G. Wright and H. G. Herbel for the St. Louis, Iron Mountain & Southern, Texas Pacific and I. & G. N.

Mr. Wilson: J. R. Christian, H. A. Scandrett and J. G. Wilson for the Sunset Central Lines.

Mr. Scott: R. B. Scott and George H. Crosby for the Chicago, Burlington & Quincy Railroad and the Colorado & Southern Railway Company.

Mr. Wood: F. H. Wood for the Frisco Lines.

Mr. Humburg: R. V. Fletcher and A. B. Humburg for the Illinois Central.

Mr. Dynes: O. W. Dynes for the Chicago, Milwaukee & St. Paul.

Commissioner Prouty: If there are no other appearances you may proceed, Mr. Cowan.

6 Mr. Cowan: I will have Mr. Williams called as a witness. The Assistant Secretary of the Cattle Raisers Association.

A. C. WILLIAMS was called as a witness, and having been duly sworn, testified as follows:

Direct Examination.

Mr. Cowan: Before Mr. Williams testifies I desire to make a statement for the purposes of the record.

The Commission, as Your Honor is well aware, declined to allow claims for reparation prior to the time that the Cattle Raisers Association filed its petition to re-open this case under the Hepburn law, which date was August 29, 1906. The statute provided that we would have the right to file claims within one year, which had previously accrued.

The original petition of the Cattle Raisers Association claimed reparation on behalf of its members, and by the secretary a majority of its members as well. Within a year after the Hepburn Act took effect we filed claims against each one of the railroads, which claims present the name of the shipper and also accompanied those claims by an intervening petition. Not knowing precisely what might be our legal right, that was done out of an abundance of caution.

Commissioner Prouty: Did you file an intervening petition in the name of each shipper?

7 Mr. Cowan: Yes, sir; we filed the list of the members of the Association; and from time to time within the two years provided by the limitation in the Hepburn bill, we filed the claims of shippers up to the date that the rate fixed by the Commission took effect, which was November 17, 1908. All of those claims were filed within two years, except the claims which had accrued prior to the passage of the Hepburn bill. As to those claims, many of them were accrued more than two years before the date they were filed, but the law gave the right to file them within one year, regardless of the statute of limitations.

Now, the Commission having decided on April 14th, I think it was, at all events, the date the decision was rendered was in 1908, that they would not allow the claims prior to the time we filed our petition to re-open the case under the new law, we have tabulated only the claims which accrued subsequently to August 29, 1906.

Commissioner Prouty: That was the date of the filing of your last petition?

Mr. Cowan: Yes, sir. It was filed on the day after the Hepburn bill took effect. I may explain for the purpose of the record that ordinarily the cattle shipper keeps no definite sort of

8 books; he depends on his commission company to do that. In all the cases we have the shipments are consigned to commission companies at the various markets. These commission companies sell the cattle and make up an account of sales so-called, transmitting to the shipper or the owner the proceeds after deducting out of the proceeds the amount of freight, feed charges and other charges of that character. They keep regular sets of books which are made up from the memoranda, consisting of the expense bills that are furnished by the stock yards companies, which generally collect the freight and distribute the money to the railroads, and by the scale tickets that are turned into the office on the sale of the live stock. Those memoranda are generally destroyed. I do not think they exist, probably could not be found at all after a short time, because the Commission men say that such an amount of stuff would be a great burden for the commission companies to keep so they depend upon their original books of entry from which the account sales are made out.

The Cattle Raisers Association applied to the commission companies to make up a statement for each one of their customers to show the shipments made and the freight paid. Most of

9 the commission companies complied with that request and it was made up on blanks printed and furnished for that purpose, and made it in duplicate or in triplicate; in some cases duplicates and in some cases triplicates. The Cattle Raisers Association kept one copy and the other copy was filed with the Interstate Commerce Commission. There is a vast amount of this stuff because there is probably several thousand transactions and there are several thousand copies of these statements. They run from small

amounts up to large amounts and over the various railroads, so that there has been accumulated a vast amount of data which is in Washington on file with the Commission, duly stamped with the stamp of the Secretary of the Interstate Commerce Commission.

Now, taking these duplicates remaining in the office of the Cattle Raisers Association, Mr. Williams, the witness whom I tender, has for the past six or eight months compiled for each shipper against each delivering line of railroad, the account insofar as he has been able to do it, to show the point of origin, the destination and the number of cars. In order to ascertain the amount of the overcharge Mr. Williams was furnished with a statement made up by the tariff department of the Interstate Commerce Commission, showing for each station the old rate and the rate
10 fixed by the Commission, and from those figures has compiled the amount that each one is entitled to on each carload.

Perhaps that last statement is not quite correct. The difficulty of undertaking to get the exact weights and compile it from them was so great that we decided to simply use the minimum carload weight of 22,000 pounds, rather than take the actual weight. The fact is that a great many of the shipments weighed more than 22,000 pounds, but the difficulty of making the calculation considering the small difference, was such that we decided to use the 22,000 pounds which is the minimum weight shown in the tariff. I make this explanation in order that it may appear in the record without taking the time of Mr. Williams to testify to it.

Commissioner Prouty: How is the weight of live stock determined, by the scale weights?

Mr. Cowan: Yes, it is determined by the scale weight deducting—well, there are five hundred pounds allowed for fill. Formerly they determined it by the scale weight. They now weigh all of the livestock over the scale, but it is my understanding, and I think this is correct; Mr. Brooks is here and will know quite well—it is my understanding that at the present time they settle upon the basis of the actual weight, deducting five hundred pounds
11 for the fill. At least the last time I investigated it that was the fact. Now, Mr. Brooks is here and will know definitely how it is done.

Commissioner Prouty: Are all cattle weighed when they leave the car?

Mr. Cowan: All weighed when they are sold.

Commissioner Prouty: Suppose a car comes to Kansas City and is reconsigned at Chicago and is then reconsigned and sent along to New York, what finally determines the weight of the car? The final weight in the city of New York?

Mr. Cowan: I am unable to answer the question.

Mr. Brooks: The actual weight at Kansas City, Your Honor,

less a certain amount for shrinkage, determines the final weight at the seaboard markets.

Commissioner Prouty: What is your name, please?

Mr. Brooks: Brooks.

Mr. Norton: Mr. Brooks, live stock agent of the Santa Fe.

Commissioner Prouty: Is all livestock taken out of the car or put into the car at Kansas City weighed?

Mr. Brooks: Yes, sir.

Commissioner Prouty: Is it weight when it is taken out or weighed when it is put in?

12 Mr. Brooks: The system we follow at Kansas City is that we track scale the stuff as it comes into the market and we return the car to the scale for the weight of the empties, and the result is the basis upon which the freight charges are assessed.

Commissioner Prouty: So you assess your charges on the track scale weights?

Mr. Brooks: Yes, sir. Now, occasionally when we have reached Kansas City a little late, we will rush it to the chutes and use the hoof selling weight less fixed allowance for fills. In case of cars weighing over twelve tons we allow a fill allowance of 800 pounds and in the case of cars weighing under twelve tons five hundred pounds. That is the plan that is observed today and which has been observed for a number of years.

Mr. Cowan: In all cases, of course, the minimum weight is paid for.

Commissioner Prouty: Yes.

Mr. Brooks: Yes, certainly.

Commissioner Prouty: You may proceed.

Mr. Cowan: Mr. Williams, state your official position.

13 Mr. Williams: Assistant Secretary of the Cattle Raisers Association of Texas.

Mr. Norton: Allow me to interrupt you; when did you apply to these commission houses for this statement, do you remember?

Mr. Cowan: I couldn't give you the dates, Mr. Norton. It goes back four or five years ago, perhaps longer, does it not, Mr. Williams?

Mr. Williams: Yes.

Mr. Cowan: Mr. Williams can probably tell you.

Mr. Williams, as assistant secretary of the Cattle Raisers Association, have you made up a statement or statements tabulating the claims for shipments of cattle made by members of the Cattle Raisers Association, and for whom the Cattle Raisers Association filed claims with the Interstate Commerce Commission?

Mr. Williams: Yes, I have.

Mr. Cowan: Now, you have a trunk here full of that data?

Mr. Williams: Yes, sir.

Mr. Cowan: I wish you would select out a few of those, or have you some in your pockets?

Mr. Williams: I have here the recapitulation of the
14 claims.

Mr. Cowan: I wish you would exhibit now the character of statements which you have made up.

Mr. Williams: I will have to look in the trunk to get that. Of course I can tell you.

Commissioner Prouty: I think you had better produce one of those statements, Mr. Cowan, as an illustration.

Mr. Cowan: Yes, that is what I want to do.

Mr. Williams, will you exhibit and explain from the documents which you now have in your hand, the method used in making up claims and tabulating them, and the source from which you obtained the information?

Commissioner Prouty: Has he there a tabulation of some one shipper?

Mr. Williams: Yes, sir, I have.

Commissioner Prouty: Have you copies of that?

Mr. Williams: Yes, sir, four copies of each claim.

Commissioner Prouty: Well, pass one copy to Mr. Norton, perhaps, and another one to somebody else, and let me see a copy.

Mr. Williams: That is not complete; there are two pages of that man's claim.

Commissioner Prouty: But this shows the form of
15 the statement?

Mr. Williams: Yes, that shows the make-up of it.

Commissioner Prouty: Now looking at this statement you say J. H. Aikins, Kansas City, Missouri, claimant?

Mr. Williams: Yes, sir.

Commissioner Prouty: Who is J. H. Aikins, Stock Yards, Kansas City?

Mr. Williams: He is a cattleshipper of quite a little prominence.

Commissioner Prouty: Is he a raiser of cattle or dealer in cattle in Kansas City?

Mr. Williams: My understanding is that he is a dealer in cattle. I am not sure personally.

Commissioner Prouty: Do you understand that Aikins paid these charges?

Mr. Williams: I do, yes, sir.

Commissioner Prouty: He was the man who paid the charges?

Mr. Williams: That is my understanding, yes, sir.

Commissioner Prouty: Was he the man who handled the charges as you understand it?

Mr. Williams: No. These charges were paid by the commission company by him?

16 Commissioner Prouty: For him?

Mr. Williams: Yes.

Commissioner Prouty: So these are really his cattle?

Mr. Williams: These are really his cattle; at least that is the way the stuff was given to me.

Commissioner Prouty: Now, you say William Lewis; you understand he was the shipper of the cattle?

Mr. Williams: I understand when a man ships cattle, sometimes in order to get a pass for another man, they will be billed possibly in the name of the man accompanying them. Say I was going to accompany a shipment from Ft. Worth to Kansas City, they would be billed in my name; but as a matter of fact, the Commission Company knows they are not my cattle but belong to this other shipper and are billed in my name because I am the care taker accompanying the cattle.

Commissioner Prouty: Is that same thing done today?

Mr. Williams: I understand it is to some extent.

Commissioner Prouty: They are billed in the name of the care taker?

Mr. Williams: Not always. I am not sure of that.

Commissioner Prouty: You don't know then that Lewis was the consignor who made the shipment?

17 Mr. Williams: I haven't a copy of that particular statement.

Commissioner Prouty: Haven't you a copy of that statement?

Mr. Williams: No not that particular one.

Commissioner Prouty: Pass him a copy of that statement so he may have a copy of it.

(Document handed witness.)

Mr. Williams: All I know is that that statement was furnished me on a form similar to this (indicating). My understanding is that it was furnished to me on a form something similar to this, and it was shown on there that he was the shipper, or, rather, they were shipped in his name.

Commissioner Prouty: Now, you say consignee E. E. What do you mean by that?

Mr. Williams: That means the party to whom the cattle were consigned, or, rather, the company.

Commissioner Prouty: I know, but who was the party?

Mr. Williams: On account of the great number of commission companies and the length of their names, I decided to designate each commission company by an abbreviation such as that.

Commissioner Prouty: What commission company was this?

Mr. Williams: I would have to look that up.

18 Commissioner Prouty: But E. E. was a commission company at Kansas City?

Mr. Williams: E. E. was a commission company at Kansas City or some fellow representing the owner of the cattle.

Commissioner Prouty: And your understanding is that E. E. received the cattle and paid the charges?

Mr. Williams: That is my understanding.

Commissioner Prouty: But that the cattle were owned by Mr. Aikens?

Mr. Williams: That is my understanding.

Commissioner Prouty: And the charges were paid on his account?

Mr. Williams: Yes, sir.

Commissioner Prouty: The originating road was the M. K. & T., point of origin Ft. Worth, Texas. You say destination 2, what is meant by that?

Mr. Williams: St. Louis, the National Stock Yards Company.

Commissioner Prouty: Wherever "2" occurs in these tables St. Louis is referred to?

Mr. Williams: St. Louis, to the National Stock Yards Company.

Commissioner Prouty: Date of delivery September
19 3rd, 1908, number of cars one, and so forth.

Mr. Williams: Yes, sir.

Commissioner Prouty: Now, what is there in this statement which would enable the Missouri, Kansas & Texas Railway or the delivering railway—do you know the delivering railway?

Mr. Williams: I am supposed to know that the M. K. & T. Railway is the delivering line. At least, that was the way the information was furnished me.

Commissioner Prouty: You show on this statement the originating road, but you do not show the delivering line.

Mr. Williams: The Missouri, Kansas & Texas, delivering line, on the top there above.

Commissioner Prouty: Oh, yes, I see. Then the account is supposed in all cases to be against the delivering road?

Mr. Williams: The delivering line, yes, sir.

Commissioner Prouty: So this shipment originated upon the M. K. & T. and was delivered by the Missouri, Kansas & Texas Railroad?

Mr. Williams: That is my information.

Commissioner Prouty: You have no information as to the number of the car?

Mr. Williams: The car number we were not able to get
on account of the commission company's records not
20 showing that. It is their general books that this information was taken from.

Commissioner Prouty: So the Missouri, Kansas & Texas Railway Company would be obliged to identify this car by the name of the consignor and the name of the consignee?

Mr. Williams: Yes, sir.

Mr. Cowan: And the date.

Mr. Williams: That is the usual way they identify shipments, I understand.

Mr. Norton: My understanding is that the billing accompanying this car was delivered to the consignee at destination, to the commission man. He got this information.

Mr. Williams: Yes.

Mr. Norton: That is where the bill is which would enable us to check this up. Can you produce that?

Mr. Williams: I am not ready to produce that.

Mr. Norton: It has passed out of our hands.

Mr. Cowan: You kept a stub, did you not?

Commissioner Prouty: You must have some record somewhere which would enable you to trace this shipment if you have some proper starting point.

21 Mr. Norton: The point I want to get at is and which I had in mind when I asked Mr. Cowan some time ago as to what the date was when they went after these commission companies for this information was this—

Mr. Cowan: We did not ask the commission companies for the billing, but to fill out these blanks from their records. They do not retain these expense bills. They are destroyed. I understand at Kansas City the railroad companies destroy them themselves and that the expense bills do not exist.

Mr. Norton: They should have been retained, should they not?

Mr. Williams: I am told by an auditor of a certain railroad that they keep their record complete always. That is what an auditor told me, that it would be no trouble for the railroads if the railroads were disposed to do it to get that information.

Commissioner Prouty: Now, Mr. Cowan, you haven't in your possession at the present time the expense bills which were given when these cars were delivered and the freight paid?

Mr. Cowan: We have not, and we never did have. The commission companies take these scale tickets and expense bills and they make up their account sales and do not undertake to

22 file away and keep these things. It is simply a memorandum from which they make up their books and the transaction is closed when they send the account sales and transmit the money to the shipper.

Commissioner Prouty: Now, just what would the commission agent be able to testify to from his books? Suppose he was to come before some Examiner of the Commission and produce his books, just what could he testify to?

Mr. Cowan: The most that I know is that he could testify they kept their books correctly, that this is a regular entry made at the time of the transaction—

Commissioner Prouty: What do his books show?

Mr. Cowan: His books will show the owner of the cattle, the amount of the freight—

Commissioner Prouty: In this case would the books show that Mr. Aikens was the owner of these cattle?

Mr. Cowan: Undoubtedly.

Commissioner Prouty: He was the man they settled with?

Mr. Cowan: Oh, yes; he was the man they rendered the account sales to.

Commissioner Prouty: What else would they show? They would show that the cattle were received?

23 Mr. Cowan: That the cattle were received, sold, and the freight was paid, advance charges paid, and the balance of the money remitted.

Commissioner Prouty: Would they distinguish between the freight and the other advance charges on the books of the commission man?

Mr. Cowan: I am not able to answer that, but I think so. At all events, we have estimated the freight in this case and as I have explained, we know what the difference was between the old rate and the new rate.

Commissioner Prouty: But I was trying to see what you would be able to show without going into the books of the railroad company.

Mr. Williams: Here is a copy of an account sales which will show you something of their record.

Mr. Cowan: Here is a copy of an account sales that indicates what their records are. That of course is made up from the books of the commission company after they have made their entries, as I understand it, from the scale tickets.

Mr. Williams: That particular company keeps for their record a copy of that, the original of which is given to the shipper.

24 You see there that is complete information about the shipment, the point of origin, the freight paid, and each item is separated there.

Commissioner Prouty: Well, there isn't anything here which would show any of the details of the shipment. This would simply show that this commission firm sold on account of Mr. Coleman, for instance, a certain number of cattle.

Mr. Williams: Yes; you will find there that that shows also the delivering railroad, the freight paid, the weight, the point of origin, and so forth.

Commissioner Prouty: You are probably right, but just point out those different things to me.

Mr. Williams: You notice there the Frisco road, that means

the Frisco was the delivering railway. This is the weight they paid on and here is the rate.

Commissioner Prouty: I know, but there is nothing which shows how many cars there were. How much is there, twenty cars?

Mr. Williams: Yes; that gives the weight. That was twenty cars.

Commissioner Prouty: But you have no date of any shipment there.

Mr. Williams: No; but here is the date the freight
25 was paid.

Commissioner Prouty: You have no car number and no date of any shipment.

Mr. Norton: Here is an actual transaction from our records showing I suppose just what that does, about. It gives us no clue.

Commissioner Prouty: I am inclined to think, gentlemen, that the only way in which this reparation can be made up is from the books of the carriers. I do not think you could make it up from the books of these commission men, although perhaps you may be able to do that. It seems to me if you can furnish the carrier with some starting point it would not be unreasonable to require the carrier to take these statements and check them up in lieu of requiring the production of the books and files or whatever might be necessary for examination. What is your suggestion about that, Mr. Norton?

Mr. Norton: Even in law cases where the rule is pretty strict I never ask anything that seems unreasonable of an opponent. All we want, and notwithstanding it may involve us in a great deal of labor, is to get the scent of this, but our man behind me here says he does not think that from this we can start.

26 Commissioner Prouty: You should be furnished with such information as would enable you to identify the shipments.

Mr. Norton: While you are on that point, Mr. Chairman, I had our live stock man from Kansas City who has been speaking here this morning, show me just how the transaction is handled, and here is the stub that is torn off the billing and given to the commission house at Kansas City. Now, it seems to me when Mr. Cowan called upon those commission houses for a record of this that they should have saved all of these things. That would give us a point to start from. They had all of those stubs but they destroyed them.

Mr. Williams: Permit me to make a suggestion there; I was told by the commission companies in Kansas City that they formerly, some two or three years ago, did not get the copy of the paid expense bills from the railroads notwithstanding that they were their property, but on the other hand, when they went to the railroads afterwards the railroads said "We will file these for you

and if you need them we can get them." Now, when this case came up they say they went to them and asked them for those bills and they said "Nothing doing." That is what I am told by a commission company.

27 Mr. Cowan: We applied to the Stock Yards Company, Mr. Norton, at Kansas City and St. Louis for the expense bills. I say we applied; the commission companies told us that they did and the stock yards company at Kansas City absolutely refused to furnish any information at all and so they did at St. Louis, and the only thing left was for the commission companies to make up from their books a statement. Now, I believe that the railroad company instructed the stock yards company not to furnish this information. That is my belief.

Commissioner Prouty: Never mind what may have been done; it seems to be conceded here that if we can get such information as will enable the railroads to trace these shipments that they will undertake the labor of tracing them and checking them, and we want to endeavor, if possible, to get that information.

Mr. Cowan: We have the original statements made by each commission company.

Commissioner Prouty: Just wait half a minute. Where is the information contained on that slip, Mr. Norton, preserved by your company? It must be preserved somewhere.

Mr. Norton: In the auditing department.

Commissioner Prouty: In the auditing department?

Mr. Norton: Yes.

28 Commissioner Prouty: Take this first shipment once more; the consignor was William Lewis, the consignee was E. E., whose name can be furnished. That is simply an arbitrary designation. The originating road was the Missouri, Kansas & Texas and the point of origin Fort Worth. Now, with that information can you not determine at Fort Worth or somewhere else whether William Lewis made that shipment? The date of the shipment is given, the delivering date is given, September 3rd, 1908, from which it would follow that the receiving date was September 1st or 2nd, would it not, Mr. Cowan?

Mr. Cowan: It might be. We only asked for the delivering date which was the date the freight was paid.

Commissioner Prouty: Have you any means of giving the date the shipment was received?

Mr. Cowan: No; when the shipment is delivered at the market is the only date we can give, because the commission company's books do not carry the date of the shipment but only the date of delivery.

Commissioner Prouty: Now, this was in 1908. Where are the way-bills of 1908 that were issued at Fort Worth by the M. K. & T. or by your line, Mr. Norton?

Mr. Norton: I could not answer that. They are in
29 the auditing department somewhere, but the manner in which they are filed away, as I understand it, is related to the numbers of the cars and the initials of the cars, so that with the numbers on that stub and the initial of the car a man could go and put his hands on them.

Commissioner Prouty: It seems they cannot furnish the stubs; they have been destroyed. Now, some other way has got to be found. The point which I would like to determine is where today is there some record from which by a proper amount of labor it would be possible to identify this shipment.

Mr. Norton: Well, the counterpart of that is somewhere in our files. Mr. Brooks would like to make a statement regarding that.

Mr. Brooks: The commission company can require the stock yards company to furnish them a copy of the unloading certificate which shows the car number, the point of origin, and the consignor and consignee, and from that information we can identify the shipment.

Commissioner Prouty: That is to say Mr. Aikins or the commission merchant can ask the stock yards company at Kansas City for a duplicate of what you call the unloading ticket?

Mr. Brooks: Yes, sir.

30 Commissioner Prouty: Those records are all preserved, are they, at Kansas City?

Mr. Brooks: Yes, sir.

Commissioner Prouty: So that a man could go into those records and identify this car?

Mr. Brooks: Yes, sir.

Commissioner Prouty: Obtain the car number and initial?

Mr. Brooks: Obtain the car number and the initial and the number of cattle.

Commissioner Prouty: The number of cattle?

Mr. Brooks: Yes.

Commissioner Prouty: And when you have that information then you are able to go to your records and locate the car?

Mr. Brooks: Yes, sir.

Commissioner Prouty: What do you say to that, Mr. Cowan?

Mr. Cowan: I do not see that it is necessary to go to all that trouble.

Commissioner Prouty: Oh, well I think it is necessary for you to sustain part of this burden. I would not like to require the Santa Fe to take down all their way-bills of that year and hunt them all through to find that particular shipment if there is any easier way to do it, and it seems that there is.

31 Mr. Cowan: Well, it seems the commission company received the livestock and paid the freight and their regular set of books shows they did that. It seems to me that the evi-

dence of the payment of freight thus produced is amply sufficient without going into the question of the car numbers or things of that sort.

Commissioner Prouty: Of course you are trying your case and I am not, but if you were to proceed on that theory it would certainly be necessary to produce the commission man and his books.

Mr. Cowan: I had expected to produce the bookkeepers of the commission companies to testify that the statements they made out to us were correct and that their books were correct.

Commissioner Prouty: Well, the carriers would have a right to see the books of course.

Mr. Norton: The commission company in that case had no trouble in getting the stub; they produced this stub all right there.

Commissioner Prouty: Of course if you can show this shipper paid this freight that is all you have to show. You
32 do not have to show any car number, I think. It is for the defendants to identify that shipment if they desire to dispute it.

Mr. Cowan: I expected to prove by Mr. Williams that he took these statements made out by the commission men and has correctly tabulated them from the information furnished by the commission companies; and I had expected in case the railroad companies required it to produce the bookkeepers or some responsible authority from these commission companies to show they kept their books correctly and made these statements correctly.

Commissioner Prouty: Of course I can express no opinion as to whether that testimony would satisfy the Commission, until I had heard it. I should have to see the books and hear what the bookkeeper had to say and see how the books were kept before I could have an opinion as to whether the evidence would make out the facts you desire to prove. In all these cases it has been the custom of the Commission to have the shipments checked up and in order to do that it is of course necessary to identify the shipments. If we could identify the shipments I should feel justified in asking these carriers to take these statements and check them through just as they are going to do in the hardwood lumber case.

33 Mr. Norton: If the Commissioner please, you cannot make an award against two or three roads until the shipment has been identified and the proportion between the roads has been ascertained.

Commissioner Prouty: I think we have held, Mr. Norton, that we would award damages against the delivering road to whom the freight was paid.

Mr. Norton: We ought to have the information then by which we can apportion it.

Commissioner Prouty: Yes.

Mr. Cowan: I think that would be a matter between the railroads themselves. The delivering line collects the money and we are not supposed to know the division of the rates.

Commissioner Prouty: That is substantially what the Commission has held before. It has also been the custom, however, to put the shipments in such shape that the carriers can proportion the damages among themselves. That is to say, the proof of the payment of the freight has always carried with it some information as to the details of the shipment.

Mr. Norton: That was so in the Burnham-Hanna-Munger case.

Mr. Cowan: The most we can possibly furnish, Your Honor, is statements made up by these commission companies
34 who were the consignees who paid the money.

Commissioner Prouty: No, it appears you can furnish more than that, if Mr. Norton's statement is correct, because he says if you desire you can obtain a duplicate of the paper you have destroyed. You had a paper which would have showed all these facts. You have destroyed that paper. Now, he says you can, if you desire, obtain a duplicate of that paper. Whether that may be necessary or you think it is necessary, is another matter.

Mr. Cowan: I cannot understand why if we paid the freight and have used the minimum carload——

Commissioner Prouty: You may proceed to prove that you have paid the freight.

Mr. Cowan: Notwithstanding what Mr. Norton says as to getting these old expense bills, we have been told by the commission men that they cannot get them.

Commissioner Prouty: This stock yards company down there, does it handle these shipments as a common carrier subject to the Act to Regulate Commerce?

Mr. Cowan: I don't think so; they simply furnish the tracks.

35 Commissioner Prouty: Is it obliged to keep the records and do they keep the records so they can furnish that information?

Mr. Brooks: I know they do keep the records, yes, sir. I think as a matter of accommodation to the railroads they preserve the records.

Mr. Cowan: Then it would be an easy enough matter for the railroads to check these statements.

Commissioner Prouty: I was going to ask you if you could not take these statements and ask the stock yards company to furnish for the benefit of the Commission that information. The Commission itself could do that.

Mr. Norton: Were you speaking to Mr. Brooks?

Commissioner Prouty: Yes.

Mr. Brooks: Pardon me, I did not hear you.

Commissioner Prouty: Is it your idea if we took these statements and asked the stock yards company to identify these shipments and furnish the unloading tickets that they would be willing to do that?

Mr. Brooks: I think they would do that, but I think they would do better if they acted upon the specific records of the commission company because they could give more specific data.

Commissioner Prouty: What makes you think so?

36 Mr. Brooks: Take our case as an example, this account sales and slip represents a claim for loss and damage filed against the railroad company, and the commission company in supporting its claim against the railroad submits this slip as well as the unloading certificate. I do not anticipate that it would be necessary to furnish the unloading certificate but they do furnish that in addition to this, and of course one supports the other. I think better progress could be made by the commission company itself requesting the stock yards company to furnish the unloading certificate.

Commissioner Prouty: As I understand it, all you want from the unloading certificate is something which will identify the car?

Mr. Brooks: Yes, sir; identify the consignment. We frequently handle shipments, and probably in Mr. Cowan's statement he will show so many cars shipped for one man, we will say John Jones, for illustration, probably a train load, and he will send two or three men along to take care of the shipment, and the shipment probably will be billed in two or three different names in order to provide transportation for the caretakers. Therefore, it would be a rather difficult matter to locate the shipment on that account because you would have three different names

37 against the one consignment shown under one name in Judge Cowan's statement.

Commissioner Prouty: We are speaking now about shipments to Kansas City. Is the same procedure followed at Chicago?

Mr. Brooks: Yes, sir.

Commissioner Prouty: St. Joe, and other points?

Mr. Brooks: I understand so.

Mr. Cowan: Now, Mr. Brooks, your billing will show the name of the care taker?

Mr. Brooks: Yes, sir.

Mr. Cowan: Your billing does not show the name of the owner?

Mr. Brooks: No.

Mr. Cowan: The commission company's books, however, show the name of the owner?

Mr. Brooks: Yes.

Mr. Cowan: And for whom the freight was paid, and for

that reason it seems to me the commission company's books are the ones to show who really paid the freight and if you went and got all your tickets they would show the caretaker and not the owner of the cattle.

Commissioner Prouty: Gentlemen, we will take an
38 adjournment until 2 o'clock and you may consider this in the meantime, Mr. Cowan, and see what steps had better be taken.

Whereupon, at 12:30 o'clock P. M. a recess was taken until 2 o'clock P. M.

AFTER RECESS.

Commissioner Prouty: Now, Mr. Prouty, you may proceed.

A. C. WILLIAMS was recalled, and having been previously sworn, testified as follows:

Mr. Cowan: Mr. Williams, you heard my statement this morning with respect to the character of information furnished the Cattle Raisers Association of Texas by the live stock commission companies at the various markets. Were you, during this time, in the employment of the Cattle Raisers Association?

Mr. Williams: Yes, sir.

Mr. Cowan: Are you familiar with the facts which I have stated?

Mr. Williams: Yes, sir.

Mr. Cowan: Were those statements which have been filed with the Interstate Commerce Commission furnished to the secretary's office of the Cattle Raisers Association before they were sent to Washington?

39 Mr. Williams: Yes, sir.

Mr. Cowan: You were then working under Mr. Crowley, the secretary of the association?

Mr. Williams: The first part I was; the second part I was under Mr. Spiller.

Mr. Cowan: Will you state for the purpose of the record as to whether what I said about it is the correct history of the making up of these statements?

Mr. Williams: It is, to my knowledge.

Mr. Cowan: Were the statements that were furnished by the commission companies furnished in duplicate, one set filed with the Interstate Commerce Commission and the other set left in the office of the Cattle Raisers Association?

Mr. Williams: Well, the data was furnished by the commission companies and tabulated from that office and furnished to the Interstate Commerce Commission.

Mr. Cowan: Are you able to testify that the data which you now have here compiled from statements made by the commission companies is correctly compiled and shows truly the figures as furnished by the commission companies?

Mr. Williams: We have been very painstaking and
40 tried to get it exactly correct.

Mr. Cowan: Have you examined the books and records of any of the commission companies at Kansas City and St. Louis to ascertain the facts as to whether or not they keep a record showing the consignors and themselves as the consignee, the date of the shipment, the number of cars and the amount of freight paid as reflected in the compilation which you have made?

Mr. Williams: Yes, sir, I have.

Mr. Cowan: Do you know whether or not it is a fact that live stock shippers keep records of their shipments or whether they depend upon the commission companies to do so?

Mr. Williams: There are very few of them that keep any records themselves. They depend upon the commission company as their agent to represent them, just as somebody else depends on their attorney, and such as that. In case where they need to look up the information they always write to the commission company and ask for a duplicate account sale or any other information they may desire. While in Kansas City and St. Louis the other day I was very particular to look into that and to ask them if I should come into their office and say I shipped a certain number of cars of cattle there in 1906 if they could tell me all the informa-
41 tion you asked a minute ago and every one whom I asked said yes, that they could with their records and the records of the stock yards company give all that information.

Mr. Cowan: Are you familiar with the fact that when this case was decided by the Interstate Commerce Commission holding these rates were unreasonable, that circular letters were issued to the members of the Cattle Raisers Association and to other shippers, to furnish the information as to the date of their shipments, the number of cars shipped, where from and to where? Are you familiar with that fact?

Mr. Williams: I remember it, yes, sir.

Mr. Cowan: Now, is it or not a fact that the shippers in practically all cases referred the secretary of the association to the commission company?

Mr. Williams: In a great many cases they just simply forwarded our letter to the commission company and they sent us the data in connection with the return of the letter sent them by the shippers.

Mr. Cowan: Is it or not a fact that in all cases where freight was paid on a shipment of cattle that the amount of the money is paid by the commission company to the railroad and de-
42 ducted out of the account sales?

Mr. Williams: That is my understanding, that it is always done, except possibly a few exceptions where some payments might be made in advance; my understanding, however, is that it is always paid by the commission company.

Mr. Cowan: And deducted out of the account sales?

Mr. Williams: Deducted from the proceeds.

Mr. Cowan: Do you know of any case in which that is not done?

Mr. Williams: I don't know of any.

Mr. Cowan: You have seen a great many account sales?

Mr. Williams: Yes, sir.

Mr. Cowan: And that is always the case according to your information?

Mr. Williams: As far as my personal knowledge and information is concerned.

Mr. Cowan: In regard to the contract made by the railroad company, take, for example, a shipment from Colorado City, Texas City, or Ardmore, for instance, is it not a fact that the live stock contract made up by the railroad agent is signed by the care taker, the man who goes along with the cattle as the owner?

43 Mr. Williams: That is my understanding of the rule. I remember very well I took a trip of that kind once and I signed up the statement.

Commissioner Prouty: You say the contract; is that what corresponds to the bill of lading in ordinary cases?

Mr. Cowan: Yes, in all cases the tariff provides there shall be a live stock contract with a great many stipulations in. That live stock contract is signed by the man who goes along. He used that as his return passage. That is the thing that is returned to the auditor of the railroad company without the name of the owner of the cattle on it, but the name of the care taker.

Commissioner Prouty: Does it show the consignee?

Mr. Cowan: Oh, yes, the consignee is always the commission company.

Commissioner Prouty: Does it show the number of the car?

Mr. Cowan: Always shows the number of the car.

Commissioner Prouty: And the number of the cars?

Mr. Cowan: Yes, and the number of cars.

Commissioner Prouty: And you say that is used by the care taker when he has it, for his return passage?

Mr. Cowan: Yes, he would go here to Chicago into

44 the office of the railroad company that does business or has an agent there, and it would be submitted for his return passage. He turns that in to the conductor now. That is the general rule. I don't know that every railroad company does that. There was a time when they took up the contract and issued a pass.

Mr. Norton: Still this bill of lading you speak of shows who the consignor is as well as the care taker, does it not? The shipment is not made with the care taker as consignor?

Mr. Cowan: I think you will find in every case that that shows that way.

Commissioner Prouty: If we knew, Mr. Norton, the name

of the consignee and the initials of the car I understand you then to say it would be possible to locate the shipment and the transaction?

Mr. Norton: The initials and number.

Commissioner Prouty: The initials and number, I meant that. Proceed.

Mr. Cowan: Mr. Williams, you have made out statements of the sort which you showed here this morning?

Mr. Williams: Yes, sir.

Mr. Cowan: And that shows the account of each shipper against each delivering line of railroad?

45 Mr. Williams: Yes, sir.

Mr. Cowan: You have those here?

Mr. Williams: I have.

Mr. Cowan: And you have those in duplicate?

Mr. Williams: Four copies of each, yes, sir.

Mr. Cowan: Now, have you made up statements for all the shippers and all the shipments?

Mr. Williams: No, I have not completed the statement yet. We have a few more to be finished.

Commissioner Prouty: How long will it take you to complete them, Mr. Williams?

Mr. Williams: Why, it is pretty hard to say. I would say two months.

Mr. Cowan: Is it or is it not a fact that in some instances claims are filed with the Interstate Commerce Commission where you do not have in your office at Fort Worth duplicates of the claim?

Mr. Williams: It is a fact.

Mr. Cowan: Mr. John B. Daish, I believe, attended to the filing of those claims?

Mr. Williams: Yes, sir.

Mr. Cowan: Without securing the additional claims

46 of which you have no duplicates of course you could not now complete the statements?

Mr. Williams: I could not complete the job, no, sir.

Mr. Cowan: Have you made up a tabulated alphabetically arranged statement of the claims which you have already prepared thus far?

Mr. Williams: Yes, sir, I have.

Mr. Cowan: I will ask that that be filed. Have you a duplicate of that?

Mr. Williams: Yes, sir.

Commissioner Prouty: Now, that is a tabulated list of the statements which he has made out?

Mr. Cowan: Yes.

Commissioner Prouty: What does this give, the name of the claimant?

Mr. Cowan: Just state, Mr. Williams, what it shows.

Mr. Williams: This gives the name of the shipper and the number of cars and the amount of the overcharge.

Commissioner Prouty: In the case of each claimant?

Mr. Williams: Against each railroad individually.

Commissioner Prouty: Against each railroad and in favor of each individual?

47 Mr. Williams: Yes, sir.

Mr. Cowan: Now, the way you got at the amount of this overcharge, Mr. Williams, I believe I have not asked you that, was from a statement made from the tariff department of the Interstate Commerce Commission that you had before you?

Mr. Williams: That is what I understand, and then that statement I believe reached to June 15th, 1907, and I secured in another way the tariff notices sent out by these tariff bureaus showing small changes. For instance, I believe, for instance, at Welectka, Oklahoma, it was stated the rate was afterwards changed a few cents. I think that is on the Frisco, and they had occasion to make a little bit better rate to somebody there and so they sent out notice to the other roads and filed it, and I believe it was a reduction in that case.

Mr. Cowan: You had before you the order of the Interstate Commerce Commission in this case?

Mr. Williams: Yes, sir; showing the rates which should have been charged.

Mr. Cowan: And you had a statement from the tariff department of the rate from each and every station, the old rate and the new rate?

Mr. Williams: Yes, sir.

48 Mr. Cowan: Are you able to state that the compilation you have made as to the amount of the overcharge is correct?

Mr. Williams: I have every reason in the world to believe that it is correct. I have been very diligent in trying to get it so.

Mr. Cowan: Generally in Texas the difference was three cents per hundred pounds?

Mr. Williams: Three cents; there were only a few points I believe in the Pan Handle where there was any difference.

Mr. Cowan: Then when you get down into southern Texas and below San Antonio it graded down less?

Mr. Williams: Down in fact to nothing.

Mr. Cowan: Down to nothing?

Mr. Williams: In the extreme southern end I believe there were no claims to be filed on that.

Mr. Cowan: You are able to say that you sought the best means of information, and that the amounts you have made out are correct?

Mr. Williams: Yes, sir.

Mr. Cowan: You used the minimum carload weight of 22,000 pounds in all cases?

Mr. Williams: In all cases with the exception of I
49 believe two claims. One of those was for Edward F. Swift and the other for Morris & Company. I believe those two give the weights and in that case the exact weights were used.

Mr. Cowan: Outside of that you generally used the 22,000 pounds basis?

Mr. Williams: As a general rule the 22,000 pound minimum car was used.

Commissioner Prouty: Do you desire to file that statement, Mr. Cowan?

Mr. Cowan: Yes, sir; I said I wanted to introduce it.

Mr. Norton: Is that the only one you have?

Mr. Williams: I have one copy. I intended to keep this myself and file the other copy.

Commissioner Prouty: Where is your other copy, Mr. Williams?

Mr. Williams: In the trunk there.

Commissioner Prouty: You may get that and file it.

(The document, so offered and identified, was received in evidence and thereupon marked "Complainant's Exhibit No. 1, witness Williams, received in evidence September 19, 1912," and is to be forwarded to the Commission by Mr. Williams.)

Mr. Cowan: Mr. Williams, probably this statement
50 and the other statements you intend to file need some explanation on account of the fact that you have used some signs, not having room to write out the information in full.

Mr. Williams: Yes, sir.

Commissioner Prouty: If there are any signs on that exhibit that need explanation it would be a good plan to file a key as you go along.

Mr. Cowan: I think that is a good plan.

Mr. Williams: On this it would only be necessary to show the sign used for the M. K. & T.

Mr. Cowan: I will ask Mr. Williams to write an explanation so that both the individual claims themselves and the summaries will be readily understood by the explanation that he prepares and files.

Commissioner Prouty: Now, you desire to file in addition to that a statement like the one Mr. Williams showed us this morning?

Mr. Cowan: Yes.

Commissioner Prouty: For each individual shipper?

Mr. Cowan: Yes.

Commissioner Prouty: Very well.

Mr. Cowan: The only other evidence we want to
51 offer would be the commission company's agent to show they keep correct books and that these are correct statements.

Commissioner Prouty: You may ask any question you desire to ask.

Mr. Cowan: I would like to ask the number of the exhibit that has just been laid on the table.

Commissioner Prouty: We will treat this as a new hearing and call it Complainant's Exhibit 1.

Mr. Cowan: What does that contain, Mr. Williams?

Mr. Williams: This first sheet is a recapitulation of the other sheets showing the totals of the other pages.

Mr. Cowan: And the other sheets are respectively showings against different railroads?

Mr. Williams: Yes.

Mr. Cowan: Each sheet against a different railroad?

Mr. Williams: No, each sheet is divided into separate headings in this way: Page number 1, for instance, represents 270 cars against the M. K. & T. Railway Company; amount of overcharge $1817.20. The next heading is for the Frisco and gives the number of cars and amount, and so forth.

Mr. Norton: Will you be able to give us a copy of that?

Mr. Williams: I will in time. It took the young
52 lady about two days to copy it off and me to check it over after we had copied it. We will furnish you a copy all right.

Mr. Norton: You can make several copies just as easily as one.

Mr. Williams: Yes, I have no objection to doing that.

Mr. Norton: Mr. Commissioner, I never had anything to do with this litigation before the Commission. I understand suit was brought by the Cattle Raisers Association for itself and its members.

Commissioner Prouty: Yes.

Mr. Norton: Now, there have been filed with us from time to time a series of exhibits or claims for reparation by H. E. Crowley which shows in the first column the shipper, in the next the point of origin, next the point of destination, next the date and next the number of cars. As soon as these began to come in I sent them to our auditor getting ready for this hearing and they were returned with the information that from the date of shipment they could not look the matter up.

Commissioner Prouty: Just a minute, Mr. Norton, who is Mr. Crowley?

Mr. Cowan: Mr. Crowley was the secretary of the
53 Cattle Raisers Association at one time.

Mr. Norton: So I expected at this hearing there would be some more definite proof. What I was going to ask the witness about is that this first one I turn to shows that seven of the claimants are denominated members and eighteen of them denom-

inated as non-members. I do not know whether the non-members have any right in this litigation.

Mr. Cowan: The original petition was in behalf of the members of the association and others similarly situated. When the commission companies came to make up the claims they did not want to segregate out from their customers the members of the association and those who were not members of the Cattle Raisers Association. The result was they furnished a statement showing all their customers shipping from the districts where the rates were reduced; and in behalf of them as well as the members of the association Mr. Crowley filed these claims, so that the claims were filed not only on behalf of the members of the Cattle Raisers Association, but on behalf of others than members of the association and they were designated as members and non-members.

Mr. Norton: Were those non-members ever made parties to the suit?

54 Mr. Cowan: They were made parties in the reparation claim, and an intervening petition was filed in the case along with the claims. There was a great batch of stuff weighing three or four hundred pounds filed with the Commission.

Commissioner Prouty: Now, Mr. Cowan, you had a year from the time the Hepburn amendment took effect to file your claims with respect to transactions which took place before that amendment took effect. That amendment took effect in 1906, did it not?

Mr. Cowan: August 28th.

Commissioner Prouty: I see here exhibits filed June 1st, 1908. What would you claim as to the effect of that exhibit?

Mr. Cowan: Well, of course we had a right to file claims within two years at all events.

Commissioner Prouty: Yes.

Mr. Cowan: From time to time as members of the association or others sent in their claims they were filed.

Commissioner Prouty: Anything filed after August 30th, 1906, would simply include claims which accrued two years before the date when the exhibit was filed?

Mr. Cowan: That is correct.

55 Commissioner Prouty: Then it would not make any difference whether they were members or nonmembers, would it?

Mr. Cowan: I think not; I so construe it. Any one had a right to file a claim for reparation, members or nonmembers.

Mr. Norton: Any party to the suit.

Commissioner Prouty: There seems to be an intervening petition here, Mr. Norton, asking for reparation under the decision of the Commission. Now, an intervening petition would not necessarily be confined to a member of the association.

Mr. Norton: No, but I was just trying to find out whether

these non-members were ever parties. I assume all the members were, by virtue of their membership, parties, but we seem to have more non-members in this exhibit in my file than members, seven to eighteen.

Mr. Cowan: That may be. I have explained the reason for that was that the commission companies did not want to make out claims simply for members of the association, because it required them to go through their books. They preferred to make out claims for everybody who was a customer.

Mr. Williams: A great many of those non-members there have since become members of the association and in
56 fact may have been at the time that was made out.

Commissioner Prouty: That probably would not be significant as to any claim filed after the 30th of August, 1906, at any rate, and perhaps not before that.

Mr. Cowan: All claims accruing prior to that the Commission has refused to allow.

Commissioner Prouty: When was your last petition filed?

Mr. Cowan: On the 29th day of August, 1906. The Commission declined to allow any claims accruing prior to that time.

Commissioner Prouty: I may say with respect to this case, as I did with respect to the Burgess case, that while the Commission has up to the present time declined to allow reparation previous to August 29th, 1906, it may turn out in some legal proceeding that our determination is wrong, and if it is I assume that the Commission would reconsider that, Mr. Cowan having filed a petition for rehearing which we denied.

Mr. Cowan: These claims now filed all accrued since that date.

Commissioner Prouty: I so understand. Now, Mr. Cowan, just what do you claim for these papers you have introduced? Just what probative force do you claim? Do you claim that the introduction of those papers along with the testimony
57 of Mr. Williams makes out for you a *prima facie* case?

Mr. Cowan: I claim that it would make out a *prima facie* case if I would also bring before the Commission or an Examiner of the Commission the evidence of the bookkeepers or persons in charge of the books of these commission companies to show that they compiled these claims correctly from their books, that they are books of original entry in the regular course of business.

Commissioner Prouty: Now, do you claim that without the production of the books themselves?

Mr. Cowan: I can be compelled probably to produce the books themselves before an Examiner, were there any use of it, or the Examiner of course could be present to hear the testimony of the bookkeepers. I do not see why the books themselves should

be produced but we have no objection to going to that trouble if it is necessary.

Commissioner Prouty: Now, Mr. Norton, what do you say and what do the other defendants say as to the effect of the filing of these statements and as to the production of the books? Are you satisfied to accept the statements in lieu of the bookkeepers, and are you satisfied to accept the bookkeepers in lieu of the books?

58 Mr. Norton: Speaking only for my own company, I think the evidence offered amounts to a failure of proof and I should make a motion that the case be dismissed on that account. Mr. Cowan has had since 1906, to get this matter ready. I showed you this morning what slips were in possession of the stock yards people that were intelligible, and if they have been lost in the meantime he has been guilty of laches. There is an enormous amount of money involved here and it seems to me the proof put up to us ought to be of such a nature that we can tell whether Mr. Jones did ship a carload of freight and whether he did pay for it. That is to say, whether he sustained damage by reason of this rate. Now, nothing of that sort has been given to us.

The matter Mr. Cowan has filed from time to time I submitted to our auditor's office and they said they could not check it at all. This matter which this witness puts in this morning is almost exactly the same sort of matter. Therefore, the question is put up to us of going to great expense and labor in order to prove a case against ourselves. That is what it amounts to.

Commissioner Prouty: You ought not to be required to do that. Mr. Cowan of course is supposed to prove his case

59 but he is not obliged to prove it in such a way that you can disprove it. You have known all along as well as he has that this question would finally arise, and it was just as incumbent upon you as upon him and perhaps more so to keep the papers so he could have access to them. It rather impresses me, although I do not desire to express any final opinion, that the books of these commission merchants are evidence tending to show the amount of freight paid on these shipments. If those books when they are exhibited show the name of the man who shipped the cattle, show the number or the amount of cattle shipped, the amount of freight paid and the amount by which that freight exceeded the rate which the Commission held to be reasonable, if those books show these facts in a satisfactory way it seems to me that they would be competent proof to substantiate that fact.

Now, under the holdings of the Commission, when Mr. Cowan shows that one of these shippers made a shipment and paid the freight we hold that that makes out so far as he is concerned a cause of action, because we hold that the man who has paid the excessive freight is entitled to the reparation without showing any

special damage beyond the fact that he has paid the excessive rate. My present thought is therefore that if Mr. Cowan
60 desires and if you insisted upon it and I think it would be entirely within your rights and within the proprieties because you are not obliged to pay these claims without some evidence that they are due, I should allow an Examiner to sit down and examine these books of account or allow such an examination of the accounts as might convince you and the Commission that these several statements were correct.

On the other hand, it seems to me that if the information which Mr. Cowan indicated this morning can be obtained from the stock yards companies I think you with that information can check up these claims and thereby determine whether or not the shipment has or has not been made. It rather seems to me that would be the quickest way and the easiest way and the most satisfactory way in order to determine the amount of this reparation.

Mr. Norton: You would have us go to the stock yards companies?

Commissioner Prouty: No, I don't know that you ought to go to the Stock Yards Company. As I have already said, these commission men were already furnished once with the slips and they have destroyed them. Now, if they can do so, I do not quite see why they ought not to present these statements to
61 the several Stock Yards Companies and if necessary be to the reasonable expense of procuring duplicates of those slips. If the Stock Yards Companies decline to furnish the slips—I imagine they would be willing to do it for nothing, but certainly if they decline to furnish them for a reasonable compensation then we should have to consider what ought to be done in that respect. They do not seem to be subject to the jurisdiction of the Commission but we could subpoena them as witnesses. Mr. Cowan, however, might state that he prefers to introduce the books of account, and if so, I think we would assign the case for hearing by an Examiner and allow that to be done.

I would suggest this: We are all going to be here until tomorrow morning; I have another case here this afternoon and if it is not too late today or if there is time before ten o'clock tomorrow morning I would suggest that you go out to the Chicago stock yards and find out whether those duplicates can be obtained and if so the difficulty of obtaining them. Mr. Williams says it will take him two months yet to make up the balance of his statement. Now, if in a reasonable time you can obtain the slips which go with each statement that I understand Mr. Norton to say will give them a sufficient basis so that they
62 would take the statements and go through their books, check them up and admit the liability so far as the shipment and payment of freight proves out. That makes a satis-

factory case before the Commission and it would make a satisfactory case before the court if you went that way.

Mr. Cowan: We would be very glad to do that if we can do it. So far as the utility of it is concerned, however, it does not seem to me to be necessary.

Commissioner Prouty: Only in this way, Mr. Cowan, Mr. Norton says his people informed him that they cannot identify these transactions without looking through all of their waybills, and perhaps they could not do it then without the number of the car. What they want is the initials and the number of the car. If they have that in addition to your statements then they can identify the shipments.

Mr. Norton: Mr. Cowan's statement shows he has over $40,000 checked up against us, our company alone, and he has not finished his statement. That is a considerable sum of money for us.

Commissioner Prouty: You mean against the Santa Fe?

Mr. Norton: Yes, and we ought to have a pretty
63 plain case against us and one we can check up with reasonable accuracy. As I pointed out a while ago, they have both members and non-members here and we ought to have such data presented to us so that we can raise all legal and proper objections before the Commission. The showing ought to be complete in all particulars against us.

Commissioner Prouty: Of course a report can be made which will distinguish between the non-members and the members, but with respect to all these claims it occurs to me that it is probably entirely immaterial because an intervening petition has been filed and the non-member stands under that petition exactly like the member.

Mr. Norton: Of course I don't know if that is so.

Commissioner Prouty: It rather occurs to me that that is so. Is that your view of it, Mr. Cowan?

Mr. Cowan: Yes, sir, and it seems to me that when we prove up the party who paid the freight and that he paid the freight on so many cars that we ought not to be put to the necessity of undertaking to secure from the Stock Yards Company which does not want to furnish it the data which ought to be on file with the railroad company. I want to do what is reasonable, of course.

64 Commissioner Prouty: When you prove that, Mr. Cowan, that is so, and if you think in your mind it proves that, I do not know of course what the Commission will say and I do not know what the court may say afterwards, but if in your mind you are entirely satisfied with the proof and think the commission will be satisfied with the proof, why, as I have already said, I am perfectly willing to let an Examiner take this case and let these books of account be brought in.

Mr. Cowan: I do not mean that this proof is complete, of course. It would require in addition to what was proven by Mr. Williams proof of the bookkeepers of the commission companies that the statements they made were correct.

Commissioner Prouty: I think you would have to have the books of account themselves. My understanding is that the books of account are the evidence themselves and not the testimony of some man as to what they contain.

Mr. Cowan: Of course, that is what I meant. But these slips which have been spoken of will be found not to contain the evidence which—

Commissioner Prouty: The best way to determine that is to find out. Mr. Norton and Mr. Brooks say they do contain that evidence and Mr. Norton produced a copy of one of those
65 slips which does contain the evidence. If the slips do not contain the evidence, why, that ends it.

Mr. Cowan: It may contain it or it may not. It simply depends on whether or not the consignor happens to be the shipper.

Commissioner Prouty: No, that is not the information they want; they can get along without the consignor. They want to identify the car. They want the initials and numbers of the cars, as I understand Mr. Norton.

Mr. Cowan: We will ask for that information, but we asked for it once before and could not get it. I talked with Mr. Stark in Kansas City recently, a man who engages in the business of making up claims for overcharges, and so on, and he told me it could not be obtained.

Commissioner Prouty: Now, Mr. Cowan, how many markets are involved here? You have Kansas City and Chicago. Are there any other markets?

Mr. Cowan: Kansas City and Chicago and St. Louis and St. Joe and New Orleans.

Mr. Norton: I would like to know if Mr. Cowan has made any formal request upon any stock yards company for this data and was refused?

66 Mr. Cowan: We did. We made application in Kansas City and St. Louis and they refused because they said the railroad objected to furnishing it. I am satisfied that is a fact.

Mr. Norton: How do you mean, by being satisfied?

Mr. Cowan: Satisfied they refused to furnish it. They said the railroad companies objected to furnishing it.

Commissioner Prouty: The information undoubtedly exists, and in some form you are entitled to enough of it to make out your case.

Mr. Cowan: We will use every endeavor to secure it.

Commissioner Prouty: I suggest you find out between now

and ten o'clock tomorrow morning whether that information could be had here in Chicago and also consider on the whole whether you prefer to go ahead and utilize these bookkeepers and their books of account, because when you make out your case you are under no obligation to make out the defense. I think both of you have known all the while that this question was coming up and both of you were to blame for not having preserved the papers which would make actually certain the fact.

67 Mr. Norton: I want to take exception to the criticism of us because in the Burnham-Hanna-Munger case and other cases that they have settled under the auspices of the commission they have always had the goods and that is what we expected they would have here, the billing.

Commissioner Prouty: You have known this reparation would be claimed and you could have very easily kept a record of these shipments and had it at hand.

Mr. Norton: No, as to the shipments between August, 1906, and 1908, it had passed out of our hands before the case was decided, Your Honor.

Commissioner Prouty: We will adjourn this case until ten o'clock tomorrow morning in order to give you and Mr. Cowan a little more time to investigate and find out whether or not the information which is necessary to identify these shipments on your record is to be obtained. When the shipment is identified it seems to me the defendant should take the statement when it is properly made out and properly identified and check it up. With that understanding, gentlemen, we will continue this case until ten o'clock tomorrow morning.

Whereupon, at 3:15 o'clock P. M. on the 19th day of September, 1912, an adjournment was taken until 10 o'clock A. M. September 20, 1912.

68 BEFORE THE
INTERSTATE COMMERCE COMMISSION

Docket No. 732.

CATTLE RAISERS ASSOCIATION OF TEXAS, COMPLAINANT,

VS.

THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY ET AL. DEFENDANTS.

Chicago, Illinois, September 20, 1912. 10:00 o'clock A. M.

Before:

HON. CHARLES A. PROUTY, *Commissioner.*

Met pursuant to adjournment.

Appearances:

Same as before.

(Whereupon, at 10 o'clock A. M. a recess was taken until 2 o'clock P. M.)

69 After recess.

Commissioner Prouty: With regard now, gentlemen, to the Cattle Raisers case, Number 732. Mr. Cowan, what did you ascertain at the stock yards? What further have you to say?

Mr. Cowan: Mr. Davis, Mr. Williams and I went out to the stock yards and examined the books of Evans-Snider-Buel Company and Clay, Robinson & Company. We found they have very complete records here. The complete data with respect to shipments is contained on the Commission Company's books.

We found that they do not have as complete data either at St. Louis or Kansas City, at least the bookkeeper or secretary of the Evans-Snider-Buel Company told us they did not keep as complete a record at either Kansas City or St. Louis as they do here. Then we went to the office of the Santa Fe agent there at the stock yards and his books show every shipment, car number, all of the charges, the freight paid, initial of the car, and as far as I could see an absolutely complete record.

Mr. Norton: Where was that?

Mr. Cowan: The Santa Fe office at the stock yards. He thinks that they keep the same records at Kansas City.

70 There is not the slightest trouble or identifying every shipment, according to the record that is kept here in Chicago, if they keep the same sort of record at Kansas City.

Mr. Davis was with me and he looked it over. The agent there does not think there is any difficulty at all in identifying every shipment.

Every one of those accounts must check with the other. I saw Mr. Witten, the general superintendent of the Stock Yards Company, and he said that the record of the Commission Company and the record of the Railroad Company and the record of the Stock Yards Company absolutely must correspond and that there wasn't any difficulty at all, in his opinion, of identifying every shipment.

As far as I could see if we give the date and the number of cars shipped and the name of the consignee, the Commission Company, there isn't any difficulty at all except the amount of labor that will be required of a clerk to take these records and identify every shipment beyond any question. That is the way it looked to me. Now, I do not know what Mr. Davis thinks about it. If he has arrived I think he will substantiate that statement.

Commissioner Prouty: In whose favor, Mr. Cowan,
71 do you ask an order in this case?

Mr. Cowan: Well, we ask it really in favor of the shippers themselves. We have filed all the names.

Commissioner Prouty: So that the name of the shipper himself appears in every instance?

Mr. Cowan: In every case, yes, sir.

Commissioner Prouty: And you give a report stating that a certain individual made shipment of a certain number of carloads over a certain line and paid a certain amount of freight which was so much in excess of what was found to be reasonable by the commission?

Mr. Cowan: Yes. We made out our accounts against the delivering line because there are many instances in which it is impossible for us to determine the intermediate line. Generally we can determine the originating line.

Commissioner Prouty: Do you desire that the Commission shall attempt to determine over what line each shipment moved, or make an order against the line where the delivering road is the same? For example, suppose a shipment originates on one line in Texas, is delivered by another line at Kansas City; one shipment moves over one intermediate line and another shipment moves over another intermediate line. Do you ask the
72 Commission to distinguish between those two shipments?

Mr. Cowan: I do not think it is possible. We think that the line which collected the freight is responsible.

Commissioner Prouty: What you ask then is an order against the delivering line?

Mr. Cowan: The delivering line, yes, sir. There are many instances in which it would be impossible for us to determine the route that the cattle took. For example, a train load of ten cars or whatever it might be originated at San Antonio, starts out over the I. & G. N. Those cars come to Fort Worth with the privilege of the Fort Worth market. Now, they might have come over the I. & G. N. all the way; they might have been transferred at Milano Junction to the Santa Fe or they might be transferred at some other point and come to Fort Worth and then go to Kansas City perhaps over the Rock Island or possibly over the Katy. These shippers have no record of that and no way of proving it, so far as I know.

Now, it is my position that the delivering line collecting the freight more than they ought to collect is responsible for the excess in freight. Legally I think that is correct. If we were required to show the route of every shipment it would sim-
73 ply be impossible. In some cases we could do it. In other cases we could not. There seems to be no record which shows the route. We can show in almost all instances the originating line and the delivering line.

Commissioner Prouty: Have you completed your statements as to any particular market, or are there statements to be made up against all the markets?

Mr. Cowan: We have completed the statement for certain individuals who are named in the compilation Mr. Williams filed.

Commissioner Prouty: You are making the statement by individuals and not by markets? That is, you are doing your work by individuals and not by markets?

Mr. Cowan: No, it is done by markets and individuals.

Commissioner Prouty: But if John Jones shipped to Kansas City, St. Louis and Chicago you would make those statements all out at the same time?

Mr. Williams: No, three separate statements.

Mr. Cowan: Three separate statements, Kansas City, Chicago and St. Louis.

Commissioner Prouty: You will finish up with John Jones before you go to John Brown?

74 Mr. Williams: I am not positive as to that on account of the absence of one or two exhibits in my files, so I cannot say for certain. Of course I attempted to do that.

Mr. Cowan: The commission companies in making up these statements to us did not in all cases make up duplicates. We filed the originals with the Commission. Now, Mr. Williams has not got all of them and he will have to go to Washington City to get all of the statements.

Commissioner Prouty: My query had this thought in mind: is it worth while to begin on any of these markets or any of these cases until the statements are completed?

Mr. Cowan: I don't think so.

Commissioner Prouty: So you think nothing had better be done until you have finished all your statements?

Mr. Cowan: I think Mr. Williams will have to go to Washington to complete the statements, because John Jones may have shipped cars which are not shown in the duplicates that we happen to have in the Cattle Raisers Association office. Is that right, Mr. Williams?

Mr. Williams: Yes.

Commissioner Prouty: Gentlemen, I was about to make this suggestion: The Commission proposes to commit this case

75 to Mr. Davis as an Examiner of the Commission when we get to the point where we know exactly what is to be done for the purpose of making any examination of the books which may be necessary. Now, it occurred to me that he could do his work so far as it was necessary for him to do it, much more intelligently and much more expeditiously in connection with the books of the companies, both the commission merchants and the railroads, and with the assistance of the railroads and the

commission merchants. My thought suggests that the complainant should furnish a man and the railroads should furnish a man and that these two men with Mr. Davis should go to Kansas City or St. Louis or here in Chicago and check up these different statements, beginning with the books of the commission men at the stock yards and arriving at sufficient facts so that the defendants can make any further check which they desire. The first thing is to identify the shipments. Now, what do you say, Mr. Norton, to some such proposition as that?

Mr. Norton: Well, that sounds to me like asking us to get busy and go to the trouble and expense of proving the case against us. I don't think it right that we should.

Commissioner Prouty: Neither do I, but you want to know in the end whether these shipments have been made. Now,
76 suppose Mr. Cowan brings in the books of these commission men which simply show the freight has been paid. Those books here at Chicago will indicate apparently the car number, and you say that will enable you to identify the transaction.

Mr. Norton: Yes, if he makes that proof.

Commissioner Prouty: Now, the books at Kansas City may not indicate any car number and still they will make out Mr. Cowan's case.

Mr. Norton: That is the question, if Mr. Cowan wants to rest on that. I do not think the books at Kansas City show that any particular man shipped a carload of cattle or paid any money or suffered any damage by it.

Commissioner Prouty: Why, they show that the commission merchant received a certain number of carloads of cattle and a certain number of cattle from a certain individual in Texas. Those cattle were shipped from a certain point, were sold on account of this man at Kansas City and the proceeds less freight, receiving charges, and so forth, were remitted to him.

Mr. Norton: The witness said yesterday that those books might show the cattle in the name of the caretaker and not the owner at all.

Commissioner Prouty: No, I don't think so, because
77 the accounts are kept in the name of the owner. He did say, however, that if the shipping receipt was produced that that would be signed by the caretaker.

Mr. Norton: He was asked yesterday to explain who some of these people were on the slips before him and he said it might possibly be the caretaker.

Commissioner Prouty: Certainly, because he said that when those men went through with the cattle as caretakers they signed the receipt.

Mr. Norton: I feel about it just as I did yesterday; I want to be just as reasonable and courteous to the Commission as I can be, but I am under pay to a railway company to protect it against

claims which are not legally proved up and shown, and I do not want as an employe of a railway company to enable somebody who has been guilty of laches for several years to prove a case against us, or confess judgment.

Before the award was made by the Commission or before this decision was made by the Commission all of these transactions have taken place on which they are seeking reparation. They were expecting to go after reparation and had all this material in their hands with which they could make proof of their claims. They have not done it and I do not think they should ask us
78 to do it now.

Commissioner Prouty: I think if we had done our duty we should have required you to keep an account of all the cattle shipments made to these different markets at the time. I think I shall interest myself to secure whatever legislation is necessary if it is necessary, and if not, we will do it without it, to require carriers in cases of this sort where there may be reparation, to keep an account of all shipments of that kind. There is nothing unreasonable about that.

Mr. Norton: There may not be, but I think it is unreasonable now to ask us to go into our books when they do not give a single initial or a single car number.

Commissioner Prouty: But there is no doubt some cattle were shipped from Texas.

Mr. Norton: Yes.

Commissioner Prouty: And that these rates were paid.

Mr. Norton: Yes.

Commissioner Prouty: And that the Commission has decided that a less rate should have been paid. Now, it ought to be the desire of all parties to ascertain in order to present this question fairly, what shipments were made. You certainly do not want to pay anything unless the shipment was made; and we cer-
79 tainly do not want to award damages unless the shipment was made, so it is in the interest of all parties to ascertain whether the shipment was made.

Now, my suggestion is that the complainants shall furnish a man to protect their interests and the carriers shall furnish a man to protect their interests, and that the Commission shall furnish an Examiner to examine the books and see what the books show.

Mr. Norton: I do not know whether it is in the interest of all parties to ascertain whether the shipments were made. It does not become of interest to us until complainant has shown he made the shipment. Then it becomes of interest to us to check it up. But he has not offered proof here to show that any particular shipment was made. As I say, they had all this material in their hands just as much as we did, and if the Commission had power to require records to be kept they were just as capable of keeping

them as we were. I do not know why all the burden of keeping these accounts should be cast upon the carriers.

Commissioner Prouty: I do not think they are just as well able as you are. Of course, they should have kept their expense bills; they knew this matter was coming up and there is
80 no reason why they should not have kept their expense bills also, and consequently I am not disposed to cast any undue burden upon you; but it seems to me we ought to get at the facts in the cheapest and most expeditious and certain way we can. Suppose we required you to bring all your books into this court room here, why, it would be an unending labor for you to do it and for us to examine your books here.

Mr. Norton: Yes, I know that.

Commissioner Prouty: It is the right of the complainant to ask us to do that if he cannot make out his case in any other way.

Mr. Norton: If he is to ask for a subpoena he would have to specify in the subpoena what he wanted.

Commissioner Prouty: Oh, I think this Commission can make an order without specifying anything more than the books necessary to be produced. It would be your duty to produce those books which would show what he desires to know. We would make the attempt anyhow.

Mr. Norton: I do not quite agree with you on an action for damage. In an investigation of rates I think it could be done, but whether our books could be used against us in an action for damages I am very doubtful.

81 Commissioner Prouty: Well, we will not discuss that any longer. I understand you decline to accept that suggestion. That being so, Mr. Cowan, what suggestion have you to offer?

Mr. Cowan: I suggest that Mr. Davis or some other Examiner of the Commission be appointed to take these claims which we propose to file here and to take the evidence of the bookkeepers of the commission companies to show that these shipments were made and the freight was paid. Now, that is enough.

Commissioner Prouty: I think the books themselves must be produced.

Mr. Cowan: Let him examine the books.

Commissioner Prouty: He will do that.

Mr. Cowan: There is full power under the law given to the Commission to examine those books and the commission company will permit it and if Mr. Norton don't want to check it up—

Commissioner Prouty: We do not necessarily need to wait until they are checked up; when you have produced the evidence we can enter an order. What I am saying now is the railroad companies should have an opportunity to check it up. If they are not disposed to accept some proposition by which they can do that

we do not need to wait six or seven months for these gentlemen to check up these claims.

82 Mr. Norton: In answer to the suggestion of the Commissioner that we decline to do thus and so, I do not want the record to read that way. The proposal is so strange to my point of view that it comes entirely new, that a complainant in an action for damages should come in and ask us to prove his case.

Mr. Cowan: We have proved that we have paid the freight.

Mr. Norton: You have not proved that you have paid the freight.

Mr. Cowan: I propose to do it before an Examiner of the Commission. The Commission has full power to send an Examiner to Chicago, St. Louis and Kansas City and make full proof from the original books of entry.

Commissioner Prouty: I said yesterday that we would do that if no better way could be found and of course we will; but I think you gentlemen must take these statements which ought to be filed at once and be checking them up in the meantime because when that proof is made we shall not feel under any great obligations to wait any great length of time for you to verify them, because there is another way in which your rights could be protected.

Mr. Norton: I am not throwing any bricks either in your way or in Mr. Cowan's way, but the proposition here is that
83 we come in and prove that we owe Mr. Cowan a certain amount of money.

Commissioner Prouty: No, the proposition is this: that from the record kept by your company and these commission companies we ascertain what shipments of live stock moved from various points in Texas to these various markets and who made those shipments. That is the proposition.

Mr. Norton: This matter which has been submitted to us has been submitted to our auditors and they say they cannot find the car numbers. For instance, out of Amarillo station we may send out several trains loads of live stock in a single day and here is John Smith has a single car from Amarillo to Kansas City.

Commissioner Prouty: Now, my proposition is that Mr. Davis and your man and Mr. Cowan's man go down to Kansas City and identify that car. That is exactly my proposition. If Mr. Cowan makes his proof as he proposes to, it does not identify the car and on your statement it might be a very difficult matter to do it, but still the material must exist with which to identify that car.

Mr. Norton: No doubt it is all in our files.

Commissioner Prouty: In the case of the lumber reparation cases involved in the yellow pine shipments from the south

84 there were certainly more shipments than there are here. Those shipments were all identified, all checked up and it was all done by the railroads. It was not done by the shippers at all.

Mr. Cowan: We examined the books out there at the stock yards this morning. There isn't any difficulty about it at all.

Mr. Norton: I beg pardon.

Mr. Cowan: Absolutely, no, sir; there is no difficulty at all. Your agent out there at the stock yards can identify every shipment put in there and he can do it at Kansas City or anywhere else and all of this talk about not being able to identify these shipments, why, there is nothing to it at all. Mr. Davis and I went out there and examined the books and saw them and you did not.

Mr. Norton: He hadn't declined to produce the information. Have you any objection to producing it?

Mr. Cowan: I don't have to produce it.

Mr. Norton: Knowing this gentleman out here at the stock yards has all this information why haven't you selected it and presented it here in a concise form so we can check it?

Mr. Cowan: For the simple reason I don't have to
85 prove anything except that we shipped the cattle and paid the freight.

Mr. Norton: I think you do, and I think it would be unfair, Mr. Commissioner, in view of his statement to require us to go any further. Let him rest.

Mr. Cowan: All right.

Mr. Burg: If Mr. Cowan thinks he is under no obligation to prove his case up clearly and unqualifiedly I do not see where the duty of the carriers lies to assist him. He has had four years to produce this, he knows where it is and he has not produced it and now he enlists the aid of the Commission to assist him to make the carriers prove his case for him.

Mr. Cowan: No, he does not.

Commissioner Prouty: No, I do not so understand it at all, but when Mr. Cowan has proved his case so that the Commission is prepared to make an order in his favor then you gentlemen are going to say "We have got to have a year or two to check this up," and you are going to say "We haven't the information from which we can check it up." Now, my purpose is to have the whole thing checked up in one proceeding so we know where we are at the end of that proceeding and there is no further question about what shipments have been made and what money has been
86 paid. But if you defendants prefer to have it the other way it is undoubtedly your right to do so; and whenever Mr. Cowan has completed his statement we will designate an Examiner to look at these books and if they show what he says they do, we will enter up an order in his favor.

Mr. Burg: As I understand Mr. Cowan he seems to think the testimony he has put in so far proves his case.

Mr. Cowan: I never said anything of the sort.

Commissioner Prouty: No, he has made no statement of that sort, or one susceptible of such construction.

Mr. Wood: I do not know whether I am altogether apart from everybody, for we have not had very many conferences, but I do not think the carriers should be captious or unduly technical in connection with this matter. Now, whether the railroad companies could be required to do what they have ordinarily done in these reparation cases, that is, take the expense bills and then without any further proof on the part of the complainant, check those up against their records and make their report, I don't know, but at any rate that has been the practice that has been pursued.

So far as I am concerned if Mr. Cowan will give us the car numbers or some information regarding these shipments
87 by which these shipments can be checked in the manner in which they are ordinarily checked I do not see any reason why we should decline to do it. I understand he declines to do that, and possibly in some instances he cannot. That is unfortunate for his clients, but we cannot be charged up with that, that cannot be charged against us.

Now, it seems to me the vice of Mr. Cowan's proposition, and I may be in error in my construction of the law, but it seems to me it is this, that he assumes when he produces the books of the commission companies he has made a *prima facie* case. I cannot agree with that proposition, Mr. Chairman, for this reason; it seems to me that Mr. Cowan's case consists of proving not only that a certain amount of money was paid to a railroad company by a commission merchant, of which the books would undoubtedly be competent secondary evidence if the expense bills had been destroyed; but it is essential also that he should show that the shipment was made from a specific point to a specific point over certain carriers dates, and that a certain freight rate was charged. Then it follows as a matter of course that if that freight rate were charged and that specific rate was unreasonable to the extent of three cents a hundred
88 pounds and reparation is awarded on any shipment, reparation will be awarded in that amount, but it seems to me that all of these other things other than the payment of some freight by a commission company to a railroad company in Kansas City and St. Louis, are an essential part of Mr. Cowan's case.

I do not understand on what theory the books of the commission companies could prove or are proof of anything except the payment of the freight. Therefore, it is not just simply a question of our checking up those books and seeing whether they agree with the statement, but it is a question of whether the proof that has been offered in that manner is adequate. It does not seem to me that it is and it does not seem to me that it is unreasonable for us to say

to Mr. Cowan if he wants a short cut method of establishing the amounts enumerated in these statements, that instead of having subpoenas issued and bringing the way-bills and everything else before the Commission, if he wants some short cut method of that sort that he should arrange to see that what is ordinarily furnished, that is, the car numbers and the dates of shipments and such description of the shipments, is supplied us so that they can be checked. I assume that when we do that we have helped him to make his case, but I have no objection to helping him make his case in
89 that manner.

Commissioner Prouty: Where is he to get that information?

Mr. Wood: I beg pardon?

Commissioner Prouty: I say, where is he to get that information, where can he find the car numbers?

Mr. Woods: Well, it has been stated that at Kansas City, it could be obtained from the stock yards.

Mr. Norton: He said a while ago that at Chicago it can be obtained from our agent at the stock yards.

Mr. Wood: It has been so stated as to Chicago and St. Louis. It could have been obtained readily if the complainants had kept their expense bills. Now, if through their neglect they have failed to keep that which is an essential part of their proof, it does not seem to me that we should be called upon at great expense to supply the necessary link in the chain. Wherever they can give us the car numbers, speaking for our company, our position would be that we should do as we ordinarily do in reparation cases, take those things and check them up; but when it comes to going all through the way-bills of a railroad company for a period of four or five years, why, we have had enough experience in preparing tonnage statements of one sort and another to know that it is an enormously
90 expensive job. The claims already submitted against the Frisco Lines aggregate $28,000, and I do not believe I am overstating when I say it would cost probably a half or at least as much as a third of that amount of money to supply from our record the information required. It does not seem to me that the railroad companies ought to be put in that position or required to do that.

Mr. Cowan: In reply to what Mr. Wood has said, for the purpose of the record I desire to say that all of these railroad companies collected the money from the commission companies. The commission companies pay the money for the shipper. The car number is entirely immaterial. It does not make one bit of difference except for the purpose of their being able to check it up against a connecting line in order to make each connecting line pay the amount that it ought to pay by reason of the divisions of the freight rates that these lines have between one another.

We have never had the information Mr. Wood speaks of. I have said several times and I repeat it, and I charge now that these gentlemen, whether they did it or not, somebody did among the railroads, refused to permit the stock yards company at St. Louis and Kansas City to give me the information, and I can
91 prove that, gentlemen, if you want me to prove it.

Mr. Norton: We deny it.

Mr. Cowan: You need not deny it because I can prove it We tried to get that information from the stock yards company and we were informed by the managers of the stock yards companies at St. Louis and Kansas City that the railroad companies had requested them not to furnish it, and I believe Mr. Brooks knows it I am stating that as a fact.

Now, we could not get these car numbers. We can get no expense bills. We can get nothing except what was on the commission company's books. We brought Mr. Crowley here, the former secretary of the Cattle Raisers Association and we went there to Kansas City and undertook to do it, and I went myself to see the manager of the stock yards company at Kansas City, and I understand your company, Mr. Norton, said to the stock yards company not to furnish the information, and we understand that was stated at St. Louis.

92 Mr. Norton: Your understanding is like your evidence, it is only hearsay. Mr. Brooks is here and he will testify—

Mr. Cowan: Well, Mr. Brooks was not your livestock agent then.

Mr. Norton: You said he knew about this situation.

Mr. Cowan: Well, I believe Mr. Brooks knows that is the fact.

Mr. Norton: Well, he denies it.

Mr. Cowan: All right. Mr. Al Kiechler, who is manager of the Cassoday Commission Company at St. Louis, undertook to get that information for us at St. Louis and the manager of the St. Louis Stock Yards Company refused to furnish it, and he said they did it because the railroads objected to their doing it. Now, that is the truth about it. I don't like to have to make statements like this but I do not think you gentlemen ought to stand up here and make statements about our not having information which in my candid opinion your companies have commanded the stock yard companies not to furnish.

Mr. Norton: All these commission men had this information, that handled your stock.

Mr. Cowan: No, they did not.

93 Mr. Norton: I showed the chairman yesterday the information which goes into the hands of the commission men.

Commissioner Prouty: Mr. Cowan, would it in your judgment be possible now to file the statements which you have prepared?

Mr. Cowan: Yes, I wish to file these statements and then I wish to ask the Commission to furnish an Examiner to take the evidence of the commission companies.

Commissioner Prouty: That probably had better not be done until the statements are all filed.

Mr. Cowan: Yes.

Commissioner Prouty: You say it will take some two months to complete the statements?

Mr. Cowan: Yes, Mr. Williams said it would take about two months.

Commissioner Prouty: Now, I suggest as far as you have finished those statements, that you file the statements with the Commission and serve a copy on the railroads interested, on the delivering road, and I suggest to the representative of that road that he make such investigation of the matter as he desires to make, because if it turns out that the books of these commission merchants make out the case for Mr. Cowan we shall require you to
94 proceed with your defense and you must be ready to do so at that time. I think, Mr. Cowan, I have never yet seen the books of these commission men, I do not know what they show, but I would be glad to see those books myself in one instance, so I may form an opinion as to whether they do justify the Commission in entering an order. I will continue this case to such time as you think will suffice for the filing of these statements, and then I will endeavor to come either to Chicago or to Kansas City myself for the purpose of looking at one set of books, and determining whether it is worth while to examine the balance.

Mr. Cowan: Well now, Mr. Williams has been sworn, and I will ask Mr. Williams to please file here these statements.

A. C. WILLIAMS, was recalled for further examination, and having been previously sworn, testified as follows:

Direct Examination.

Mr. Cowan: I will ask you, Mr. Williams, to please file the statements of account of each shipper against each railroad. You have them with you?

Mr. Williams: Yes.

Commissioner Prouty: That has already been filed,
95 that is the summary has already been filed?

Mr. Cowan: The summary has, yes, sir.

Commissioner Prouty: Now, these individual statements should be filed. I do not need to sit here while they are being filed, but you file them and make service of a copy on the delivering railroad, and on any other railroad that you may desire. If you expect to hold the delivering road you may make service on the delivering road.

Mr. Cowan: I will ask Mr. Williams to file here, and if Mr. Davis is to be designated as the examiner, then these statements might better be turned over to him, as far as I can see.

Commissioner Prouty: He does not desire to bother with them until we are ready to take the testimony. When you are ready to begin, I will come here myself. I want to look at the books of account and see whether in my opinion they make out a case. If they do not make out a case we will have to go to work in some other way, I suppose. I think you are entitled to the information in some way.

Mr. Cowan: Then if I understand you, while we have these documents here now, it is not your desire that these documents be filed actually?

96 Commissioner Prouty: Yes, I think the documents had better be filed, but retained by you. You had better file the documents and make service upon the delivering carrier who should at once proceed to determine whether or not those shipments have been made.

Mr. Cowan: I will ask Mr. Williams to do that. He has the documents here so far as they have been made up.

Commissioner Prouty: Yes.

Mr. Williams: I would like to suggest that if no action is going to be taken until they are completed, that perhaps it would be better to hold the whole outfit and show each man's claim complete.

Commissioner Prouty: I know, but we want to give the carriers opportunity to examine these statements.

Mr. Cowan: Those that are already made up.

Commissioner Prouty: And determine whether or not the shipments have been made, so they will have an opportunity to prepare their case.

Mr. Norton: The delivering line will get copies of the bill against it?

Commissioner Prouty: Yes; I understood Mr. Cowan to say that that is the only line against which he asks an order.

97 Mr. Cowan: Yes, we have concluded that is the only practical way in which to do it.

Mr. Coleman: Supposing an order were made against a delivering line and that delivering line had received only a part of the revenue. Would you expect the delivering line to pay the entire claim, with no recourse on the connecting line?

Commissioner Prouty: I should expect the delivering line to pay the claim; whether it should have any recourse or not I am not expressing any opinion. If you were the delivering line and paid the freight, it is your business to find out how it moved. If you take freight which does not belong to you, there is nothing unjust in requiring you to pay it back.

Mr. Coleman: We would not in such a case have taken the entire freight.

Commissioner Prouty: Apparently, Mr. Cowan, that is all we can do at this time. Now, so far as sending out notices again is concerned, I would like to adjourn this hearing to some definite date. The Michigan Hardwood Lumber case was adjourned until the third Monday in January. Will you be ready then, Mr. Cowan?

98 Mr. Cowan: Yes, I will be ready then.

Commissioner Prouty: Then this case may stand adjourned until the third Monday in January, with the understanding that at that time the books of some one of these commission merchants will be examined. I suppose the books of one company are typical of all, and if it seems to the Commission that they make out the case of the complainants, then we will allow an examiner to go ahead and examine all the books. Otherwise we shall have to adopt some different means of ascertaining the facts.

Mr. Cowan: In the meantime I should like to have Mr. Davis, if the Commission is to assign Mr. Davis to hear the matter, or whoever is assigned to hear it, make an examination of these books so that at the date of the hearing we will be able to show them then.

Commissioner Prouty: Be able to show what?

Mr. Cowan: Be able to show then what these books of the Commission companies disclose.

Commissioner Prouty: Well, I suppose it would be your business to do that, Mr. Cowan. It is for you to determine whether or not you are satisfied to rest on that proof. It is for me to determine, and that is why I want to see the books myself,

99 whether the Commission will be satisfied to enter up an order on that proof. But you must assume the responsibility of defending that order if the Commission sees fit to enter it.

Now, it seems to me you ought to look at the books and make up your own mind whether upon that measure of proof you can defend an order if you get one.

Mr. Cowan: I have no doubt about it at all. Of course we have to make the proof and the only way to make the proof is to have the book keepers of these commission companies testify that these books are correctly kept and that they disclose such and such transactions.

Commissioner Prouty: My thought is that you should bring the books of some one Commission firm into court here, or would you prefer to have this hearing adjourned to Kansas City rather than to Chicago?

Mr. Cowan: I think it would probably be better to have it at Kansas City because perhaps 60 per cent of all the shipments involved in this case went to Kansas City.

Commissioner Prouty: The Hardwood Lumber case stands adjourned for Chicago, and this case stands adjourned for Chicago on the third Monday in January, but if it seems advisable

100 we can adjourn this case to Kansas City, as we can go down in a single night.

Mr. Cowan: Oh, I think any one of the Kansas City firms will bring their books up here. I don't think there will be any trouble. There isn't any question but what the books show that these Commission Companies on account of their customers paid so much money.

Commissioner Prouty: Do they show the point of origin, that is, do they show from what point the shipment was made?

Mr. Cowan: I am not able to answer that question except that the books out here in the office of Evans, Snider, Buel, and Clay-Robinson do.

Commissioner Prouty: These statements of yours all show the point of origin?

Mr. Cowan: I think so. Is that right, Mr. Williams?

Mr. Williams: Yes, sir.

Commissioner Prouty: How did you get that, Mr. Williams?

Mr. Williams: For the most part it came from the commission company. In some instances where the commission company might have failed to give it, we wrote the shipper and asked him as to what point it originated from. But for the most part it is from the commission company itself.

101 Commissioner Prouty: Well, I do not think it would be well, Mr. Cowan, to commit this case to an examiner and spend the necessary time to inspect all these books, until the Commission first is satisfied that it can upon the strength of that testimony, make the order you want. Now, you must show the facts, I think, stated in your statement. You must show that a shipment was made from a certain point to a certain point; that the shipper paid a certain rate; that that rate was unreasonable. When you show those facts I think you are entitled to an order.

102 * * * * * * * *

Mr. Cowan: That is correct. While assignments were made to the secretary of the Cattle Raisers Association that was a mere matter of trust in order that he might have control of them for the purposes of the suit. He was not really an interested party; he was only an assignee for the purposes of handling the case. I might say it was brought about by ignorance of what the law is in such a case; but in all cases the claim is in the name of the shipper, and while the assignment was made, the assignment was merely a form to the secretary of the association.

Mr. Burg: I would like to ask Mr. Cowan, if an award is made, if all the reparation is to go to the shippers, or if there is any part of it to go to the Cattle Raisers as an association?

Commissioner Prouty: I do not think that concerns the Commission. The award is made to the shipper and he can do what he wants to with it. If there is nothing further to be said, the case will stand continued until the third Monday in January at Chicago.

with the understanding that Mr. Williams is now to file and serve on the attorney for the delivering road the statements which he has prepared.

Whereupon at 4 o'clock p. m., September 20, 1912, the further hearing of the above entitled matter was continued until
103 the third Monday in January, 1913.

104

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Docket No. 732.

CATTLE RAISERS ASSOCIATION OF TEXAS,
COMPLAINANT

VS.

THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY ET AL., DEFENDANTS.

Chicago, Illinois, January 24, 1913. 10 o'clock A. M.

Before:

HON. CHARLES A. PROUTY, *Commissioner.*

Met pursuant to adjournment.

Appearances:

S. H. Cowan (Ft. Worth, Texas), appearing for Complainant.

T. J. Norton (Chicago, Illinois), appearing for the Atchison, Topeka & Santa Fe Railway Company.

Fred G. Wright (St. Louis, Missouri), appearing for the Missouri Pacific Railway Company, St. Louis, Iron Mountain & Southern Railway, Texas & Pacific Railway Company, and International & Great Northern Railway
105 Company.

C. S. Burg, (St. Louis, Missouri), appearing for the Missouri, Kansas & Texas Railway Company, and Missouri, Kansas & Texas Railway Company of Texas.

R. V. Fletcher (Chicago, Illinois), appearing for the Illinois Central Railroad Company.

R. B. Scott (Chicago, Illinois), appearing for the Colorado & Southern Railway Company.

W. F. Dickinson (Chicago, Illinois), appearing for the Rock Island Lines.

H. A. Scandrett and James G. Wilson (Chicago, Ill.), appearing for the Sunset Central Lines.

F. H. Wood (St. Louis, Missouri), appearing for the St. Louis & San Francisco Railroad Company.

105-a INDEX OF EXHIBITS.

Complainant's Exhibit No. 2, 157.

106 PROCEEDINGS.

Commissioner Prouty: We will take up now No. 732, the Cattle Raisers Association of Texas, against the Missouri, Kansas & Texas Railway Company and others. This case was continued until last Monday but has been held open until this time by reason of the engagements of Mr. Cowan, attorney for the complainant. Mr. Cowan, is there any other appearance for the complainant, except yourself?

Mr. Cowan: None other, except the witnesses that we have here.

Commissioner Prouty: What appearances are there for the defendants in No. 732?

Mr. Norton: T. J. Norton, for the Atchison, Topeka & Santa Fe.

Mr. Wright: F. G. Wright, for the Missouri Pacific and Iron Mountain.

Mr. Burg: C. S. Burg, for the Missouri, Kansas & Texas Railway Company, and Missouri, Kansas & Texas Railway Company of Texas.

Mr. Fletcher: R. V. Fletcher, for the Illinois Central.

Mr. Scott: R. B. Scott, for the Colorado & Southern.

Mr. Dickinson: W. F. Dickinson for the Rock
107 Island.

Mr. Scandrett: H. A. Scandrett and James G. Wilson, for the Sunset Central.

Mr. Wood: F. H. Wood for the St. Louis & San Francisco.

Commissioner Prouty: If there are no other appearances for the defendants, you may proceed, Mr. Cowan.

Mr. Cowan: If your Honor please, when we met before, I mean at the last hearing, the attorneys for the railroads seemed doubtful in regard to their ability to check up the claims that we had prepared.

Commissioner Prouty: One minute. Let me say to those who are engaged in the so-called Weighing Investigation, that that matter will be taken up immediately upon the conclusion of the present case. It seems probable this case will only occupy a comparatively short time. The other case will be reached some time before noon.

Mr. Cowan: The claims were furnished, as directed by your Honor, in duplicate, to the delivering lines of railroad. Mr. Williams is here and can state what he did in that particular, the claims having been made out for each shipper against each railroad, treating the delivering line as the one responsible or liable for the claim. There is one difficulty growing out of the

108 fact that in the original case we did not make the M. L. & T. Railroad, that is the Southern Pacific from Echo to New Orleans, a party. All the cattle shipped over that line to New Orleans originated on some one of the roads who were parties, mainly on the Galveston, Harrisburg & San Antonio, being a part of the Southern Pacific System. I had a talk with the attorney for the M. L. & T. here in Chicago and he called my attorney to the fact that they were not parties to the case, and I said, of course, that being so, no order could be made against that railroad in this particular, but inasmuch as all the shipments originated on the Galveston, Harrisburg & San Antonio, or some other road in Texas which was a party, that I would look for him, notwithstanding they were not a party, to check up the deliveries at New Orleans.

Commissioner Prouty: Are there many of those shipments?

Mr. Cowan: Very few. They did not run in the aggregate over thirteen or fourteen hundred cars a year. There are not very many of them. Some of the shipments from the Texas Pacific, it seems were delivered in fact at the stock yards at New Orleans, which is on the other side of the river from New Orleans, over the M. L. & T. tracks. We have made up those statements as nearly as we can, but they have not been entirely
109 completed. There are a good many very small shipments of one, two, three or four or five cars, and they are too small to fool with, except the fact that the shipper would complain if we did not put his claim in. And so Mr. Williams has made up in addition to what he had before, as nearly complete as he is able to do it by this time, some of the information not being very complete, the balance of the shipments; and I believe in all cases they have been furnished.

Mr. Williams: No, not yet.

Mr. Cowan: They have not been furnished, I understand, but we are prepared to furnish these. How many cars are included in that?

Mr. Williams: I do not remember the cars, but the total amounts to about $12,000.

Mr. Cowan: Now, we have examined the Commission Companies' books again. We have also applied to the Stock Yards Company for information, meeting with the same refusal we have met with before. We are prepared to show now by the books of the Evans-Snider-Buel Company, that being the company that does business at Kansas City, St. Louis, Ft. Worth, Chicago, and I think Omaha and St. Louis—all the markets—as be-
110 ing representative. We have a witness here, Mr. Moore, who has been engaged in the business many years, managing the accounting department of the Evans-Snider-Buel Company, and he has brought the books of original entry, as requested by your Honor, and is prepared to show that it shows the source

of information to which an Examiner of the Commission could go to secure everything we propose to prove.

Commissioner Prouty: Let us see in the first place just what has been done by the carriers. You say you have served since the original hearing, or before that time, or since our last hearing and before that time, to each delivering line a list of the shipments with respect to which you claim to recover damages?

Mr. Cowan: All that had been made up at that time, and these are odds and ends I have spoken of now.

Commissioner Prouty: Well, you have furnished them a list anyhow?

Mr. Cowan: Yes.

Commissioner Prouty: Just what did that list show?

Mr. Cowan: I will ask Mr. Williams to state that.

Commissioner Prouty: Well, Mr. Williams, state
111 what it shows.

Mr. Williams: I was out when this question arose and did not understand what it was about.

Commissioner Prouty: Mr. Cowan said you had furnished a list to the delivering carriers of the claims on which you claim to recover with respect to shipments over that line. I ask just what information did that list contain?

Mr. Williams: This new filing?

Commissioner Prouty: No, the one which you filed subsequent or before, I do not know which, our last hearing.

Mr. Williams: I have made no filings except those which were presented at the last hearing.

Commissioner Prouty: Then you have not done anything since that?

Mr. Williams: I have filed nothing since that. I have some now that I am ready to file.

Commissioner Prouty: You desire to file some sort of statement in addition?

Mr. Williams: The same sort of information.

Mr. Norton: That will be in addition to what was filed before?

Mr. Cowan: Yes, in the same form.

Commissioner Prouty: Now, Mr. Norton, you
112 may state what the carriers have done with respect to checking over the list furnished by Mr. Williams before.

Mr. Norton: The list furnished by Mr. Williams before, this was received by us October 9th. I do not know whether that was the date of the trial or not.

Commissioner Prouty: No, the date of the trial was September 16th, I think.

Mr. Norton: Then it was forwarded to us subsequently, and it is made up of sheets printed for the purpose, purported to show the consignor, consignee, originating road, point of origin, destina-

tion, date of delivery, number of cars moved, rate paid, rate ordered in by the Commission, and what is claimed and the amount of overcharge.

Now, on the Santa Fe at that time there was served this book, which I suppose will be introduced by Mr. Cowan, consisting of 461 pages, and relating to 5,498½ carloads of cattle. These have been checked by our auditors carefully, and have been compared with the way bills. Of this number they have been unable to locate 1,027 carloads as having been delivered by the Atchison, Topeka & Santa Fe. They did, however, find that there was a whole carload instead of the half carload mentioned. Of the 4,472 cars described in the book as having been
113 delivered by the Atchison, Topeka & Santa Fe, some few cars were left at the minimum of 22,000 pounds used in the calculations of complainant, Mr. Cowan having placed all of these on the minimum basis. Of the remaining cars a great number were above the minimum. Where the load was above 22,000 pounds, the fact is shown by a memorandum on the proper page of this book which contains copious notations from our auditors, and pasted on where they are too long to be written on. This book, and the amount of the so-called overcharge as stated in the book, has in all instances been increased by the auditors as to the amounts actually collected. In offering this book with this checking we are not making any admissions as to anything except the car movements, and the amount of freight in fact collected, which as I state, in numerous instances is above that specified in the book submitted by Mr. Cowan.

There is one thing I want to call the Commissioner's attention to, which goes to the point of our little controversy about checking these up at the other hearing. Here is sheet 6, for example, in this book, which is an illustration of what was found on a great many other sheets. This sheet enumerates 81 cars, and the auditor makes a notation here that 38 cars on this sheet
114 marked "X" cannot be located. Have tried three years of billing. Now, we made a diligent search through three years for 38 billings, and that is repeated times without number throughout this book. I call attention to that to show what our objections were in the first place, to the performance of work without sufficient data to begin with. And we submit this book with that statement to Mr. Cowan, for introduction, if he desires to do so. That is as to the Santa Fe. The other carriers I understand are prepared also and will speak for themselves.

One thing I omitted to mention. The auditor says that included in this statement which I have been referring to, were a number of shipments billed at Oklahoma City, Guthrie and Purcell, originating at Bovina, Lindsay and Henrietta respectively. The statement showed overcharge based on the flat rates from the

re-building points; but as shipments moved on published through rates from points of origin, and there was no information furnished to the effect that lower rates from those points had been ordered by the Commission, those shipments have been eliminated from our statements of billing. These items in our statements are indicated by the notation, "Fed in transit. Not included
115 in refund."

Commissioner Prouty: Have you the exhibit served upon you by Mr. Williams containing a detailed list of these various shipments?

Mr. Norton: This is it.

Commissioner Prouty: Is that the book?

Mr. Norton: That is the book, and that has been checked, and I now return it to Mr. Cowan, in case he wants to introduce it.

Commissioner Prouty: There must be some key that goes with this book. You say, Consignee E. What does that mean?

Mr. Norton: That was explained by Mr. Williams' verbal testimony at the other hearing.

Mr. Cowan: Not having the space on the sheets to write those things in, he had a key made indicating by the use of a letter the Commission Company who was the consignee.

Commissioner Prouty: Have you ever made out anything besides this, showing what your claims against the Santa Fe are?

Mr. Norton: Here is a synopsis of that.

Mr. Cowan: There is a general synopsis.

Commissioner Prouty: That is what I want.

Mr. Cowan: We undertook to make out each
116 man's claim in the form of an account against each railroad, and then made out a synopsis of all the claims against each railroad, pinning to the sheet which had been furnished to each railroad that synopsis. Mr. Williams can explain it, as he understands it a good deal better than I do.

Mr. Norton: We have checked and marked on this synopsis our checking. That means the page of this book you have just seen, sheet one, sheet two and number of cars. Now, this is four cars minus, one that was missing; there is a check (indicating). There we found them all, and there is one minus one. That could not be found.

Commissioner Prouty: I see.

Mr. Norton: We made this for our own reference. We expected to keep that.

Commissioner Prouty: You can, because I suppose the same thing is in the file with the Commission somewhere.

Mr. Williams: Yes, copies have been filed with the Commission.

Mr. Cowan: While we filed those things, we withdrew them in order to make more duplicates.

Commissioner Prouty: They should be returned.

Mr. Williams: A copy of this was returned to the
117 Commission at the time they were served on the railroads.

Mr. Norton: So I can keep that one?

Commissioner Prouty: Yes.

Mr. Cowan: Now, if Your Honor please, we thought the most we could do was this: it being such a detail matter, to satisfy Your Honor that we have the sources of information accurate, or they can be made so, and the means whereby errors can be discovered and eliminate the errors, that an Examiner for the Commission can very readily check the matter up with Mr. Williams and with a representative of each one of the railroads, and go to the source of information, and without any serious obstacle, yet involving some work, of course, check up so far as the railroads themselves do not admit, the shipments where there is a doubt about them.

Commissioner Prouty: Let us see just what the railroads do admit. Take this first item. This involves a shipment in the case of which Aaron & Hughes were the consignors. Somebody who may be termed "E" was the consignee. It originated upon the Ft. Worth & Denver City Railway at Giles, Texas, and was shipped to destination No. 1, Kansas City, delivered on March 5, 1907. The shipment consisted of two cars. The rate paid was 34½ cents. The rate ordered by the Commission was 31½
118 cents. The amount of the overcharge is $13.20. Now, the admission of the carriers would apparently show that somebody made a shipment, Aaron & Hughes perhaps made a shipment on that date and paid that rate, and are entitled to the $13.20. Do you concede, Mr. Norton, that Aaron & Hughes paid the $13.20?

Mr. Norton: No, all that we show by that is that this car did move as stated, and that we collected there the amount specified in Mr. Cowan's sheet, or else some additional amount.

Commissioner Prouty: Apparently you concede there that you collected the amount specified by Mr. Cowan?

Mr. Norton: Yes.

Commissioner Prouty: Now, it is necessary in addition to that, for the Commission to find before it makes an order, that some individual paid that freight. Mr. Cowan, do you claim that the admission of the Railroad Company shows that Aaron & Hughes paid that freight?

Mr. Cowan: Well, I do not know that I claim that the admission of the railroad is to that effect, but it would seem necessarily so, because we are prepared to prove that in all cases, without exception, there is charged up in the account sales

119 by the commission company the amount of the freight, and that is taken out and deducted from the receipts for the cattle when sold.

Commissioner Prouty: The ordinary course of business, as I understand it, was to ship in these cattle, the consignor being ordinarily the owner of the cattle, but as I recall it, some cases were pointed to in the former hearing in Septe ber, when the consignor was not the owner of the cattle. Is that right?

Mr. Cowan: That is true, but not in our statement, for the reason that we took our statements from the commission companies who were doing the business for the owner. Many times the care taker would really be the party who signed the shipping contract, but the commission company pays no attention to that. It is dealing with the man who owns the cattle and makes out the account sales, and deducts the freight, so in all cases we have named here, we have the consignor who was in fact the owner, regardless of whether the billing was in his name or not.

Commissioner Prouty: Who was the consignee, number "E?"

Mr. Williams: In most cases this line on top represents the owner, or claimant, and under the heading of consignor
120 is the same in which the cattle was shipped, as I suppose they would appear on the railroad companies' books, but the commission companies' records, as furnished us, would show who was the owner and entitled to this overcharge.

Commissioner Prouty: Where do you get your information which you put at the top of the sheet, showing the owner?

Mr. Williams: From data furnished by the commission companies. In some cases—

Commissioner Prouty: Are there a good many cases where the name of the claimant is not the same as the name of the shipper or consignor?

Mr. Williams: I hardly know. I suppose there are a good many; I do not remember right now, but I think in all cases they are shown as the consignor in the headings there. We tried to make that the name of the party in whose name they were shipped, so the railroads could more easily check them up.

Commissioner Prouty: In a case of that kind, Mr. Cowan, of course the railroad has no information except as to the party who acted as consignor.

Mr. Cowan: That is all the information the railroad company has, but the commission companies' books in all cases,
121 of course, dealing with the man who is the owner, always show who paid the freight, and that ought to be, and I think it is in all these sheets, is it not, Mr. Williams?

Mr. Williams: Yes.

Commissioner Prouty: It seems there are some five thousand carloads involved in this exhibit against the Atchison, Topeka &

Santa Fe, and that they locate something over 4,000 carloads, leaving approximately a thousand carloads not accounted for, so that there are one thousand carloads in that case with respect to which you will have to submit further proof in respect to the facts of the shipment. Then it occurs to me that you must in some way submit proof to us that the consignor in fact paid this freight. In how many do you ask to have an order made in each one of these cases?

Mr. Cowan: I think the simple way to do that, and I have thought about that some, is to have it made in the name of the Cattle Raisers Association of Texas, account of and for the shipper, the Association being the representative of the shipper. We file our claims in each case—

Commissioner Prouty: Have you an idea that you could bring suit in court in the name of the Cattle Raisers Association?

122 Mr. Cowan: Well, that difficulty also was very thoroughly considered, and for that reason, when these claims were filed we aimed to put in the names of the shippers, thinking if we had to bring the suit in court—

Commissioner Prouty: Would not the simple way be to enter up in all cases an order in the name of the shipper?

Mr. Cowan: I think so, but I think the Cattle Raisers Association, so far as the order of the Commission is concerned, could be considered the agent, because it has been the agent and representative, and I am disposed to think under the present act to regulate commerce, that the Cattle Raisers Association could maintain a suit, and we have the right to consolidate against all railroads and all shippers.

Commissioner Prouty: You undoubtedly have a right to consolidate.

Mr. Cowan: So it could all be done in one suit. But it would be like a case in a receivership, in equity, similar to that—

Mr. Dickinson: If you sue in court you would have to go before the jury, in a case at law, would you not, and a party with legal interest only could sue.

123 Mr. Cowan: That, of course, is true, but it is not necessary to do here. I appreciate the importance of what you say, but it is not an unsurmountable obstacle because the law now provides you can consolidate all these cases against each road, and consolidate all cases against all the roads, so that it is simply a question of writing in the names of the parties in interest, and in all cases we have filed their names, knowing there was a difficulty on the subject, and I think there is no obstacle in that particular. I think, answering Your Honor's question, that the order should in all cases at least be made in the name of the party at interest, whose name is furnished in the files of the Commission and here.

Commissioner Prouty: Now, then: take this first case, where

it appears that Aaron & Hughes were the consignors, and where it also appears that Aaron & Hughes are the claimants. There the claim seems to be that the freight money was paid by the same person who was the consignor; probably paid by the consignee as the agent of the consignor. Now, what proof do you propose to submit in that case to show that Aaron & Hughes have paid that freight and are entitled to the order?

Mr. Cowan: The proof consists, as I explained here before, of the books of original entry of the commission company, who on account of Aaron & Hughes, paid the money. That was the reason that we had a little controversy before Your Honor here before, in regard to the commission companies' books. They are the books of original entry and the only books which show the payment of the freight for and on account of the actual shippers who moved the cattle.

124

Commissioner Prouty: What consignee is represented by the letter "E?"

Mr. Williams: Evans & Montague, I believe. There are quite a number. This key will show.

Commissioner Prouty: Never mind. Evans & Montague, we will say, is the consignee. Now, do you propose to introduce the books of Evans & Montague to show that in the case of that shipment settlement was made with Aaron & Hughes, and the money paid over to Aaron & Hughes?

Mr. Cowan: Yes, the books of the commission company will show that, and that is the source of our information, from those books.

Commissioner Prouty: What is the reason, Mr. Norton, that that measure of proof, if offered, would not sustain a finding of fact that Aaron & Hughes made that shipment and paid the $13.20 more than the rate ordered by the Commission, and are entitled to an order of reparation in that amount? I put together your checking admission and what Mr. Cowan says he proposes to show.

125

Mr. Norton: Well, I do not like to answer that question. I think it is for Mr. Cowan to answer that.

Commissioner Prouty: Well, I will ask you if you would object, if you would claim that that evidence did not tend to support that finding.

Mr. Norton: Well, frankly I could not say whether I would. I have not studied the subject as a legal question enough to say. We checked these up, understanding from Mr. Cowan that is what he wanted us to do.

Commissioner Prouty: You have done your full duty, I think. I am trying to find out now how far your admission goes and just what it is.

Mr. Norton: As to going beyond that and saying what would be the legal effect of certain circumstances which I have not had time to consider, and which a lawyer would like to brief, I do not like to say. I must confess my inability to answer the question.

Commissioner Prouty: Well, Mr. Cowan, unless something is suggested to the Commission beyond what has already
126 been suggested, I am inclined to think that upon that measure of proof we would find the fact in your favor and enter up an order of reparation. I used this case as typical, so we may know what basis we are going to work upon. But we would require, in addition to the admission of the defendants, some proof that Aaron & Hughes paid the freight, and that proof would be supplied by the books of the commission merchant.

Assuming that to be so, Mr. Norton, would you require in every case that the books of the commission merchant be produced? You know, of course, what the course of business is and you must feel satisfied that these consignors, when they are the owners at least, do pay this freight. Now, the question is whether you would require Mr. Cowan to produce these books and establish that fact with respect to every shipment; and I am addressing this same question to all the attorneys here, if the matter comes up in the same way.

Mr. Norton: Speaking for myself, on the impulse of the moment, I should not want to put Mr. Cowan to any unnecessary work, and it would amount to unnecessary work for us. I should imagine that those books might be examined, something as a Master would examine them, and let him make a report.

127 Commissioner Prouty: That is, you would like to have the books brought in before the Examiner, who is to take this evidence and have them examined in a general way by you, so you can see—

Mr. Norton: No, I do not think I would go that far. I presumed they might be examined out there by him.

Commissioner Prouty: That is, you would allow the Examiner to go out there and examine the books?

Mr. Norton: I rather think so, answering on the spur of the moment, in company with somebody representing our company.

Commissioner Prouty: We shall try to give you an Examiner who will be entirely disinterested, and one competent to examine the books and ascertain what they show.

Mr. Norton: That is my immediate feeling about it. I have not conferred with any of the rest on that subject and do not know how they would feel, but I am not looking for any additional work in any direction.

Mr. Cowan: I am much obliged to you, Mr. Norton, because I am not either.

Commissioner Prouty: Now, Mr. Cowan, what is it your purpose to do as to the thousand cars which the Santa Fe is unable to locate in this statement?

128 Mr. Cowan: To ourselves examine the duplicate sheets furnished us by the commission companies, and see wherein they may have made mistakes, and how it happens they cannot locate those cars. Of course they are on the commission companies' books, but we can readily see where in copying, some mistakes would creep in. I can readily see where the slips themselves furnished from the scales, and which the commission companies use in making up their books—where there might be mistakes as to the railroads delivering the livestock. In most cases I am sure that will be cleared up by an examination of those instances where they have been such mistakes. It may turn out that the mistake would be of a sort that we never will be able to locate it at all, but it will be a small percentage of the shipments, I am sure.

Commissioner Prouty: Do you desire to do that yourself in the first instance, or would you prefer to have the Examiner of the Commission participate in it?

Mr. Cowan: I think we ought to do it ourselves in order to save him the work, and see if we can locate the error, and then submit our information to each railroad so we can narrow the thing down as much as we can.

129 Commissioner Prouty: It seems to me you ought in the first place to endeavor to agree with all the railroads as to the fact of the movements of these cars. Taking this thousand cars here as an illustration, you ought on your part to sit down with the Santa Fe people and try to ascertain what the reason is that they cannot locate those cars, and have them check them if possible.

Mr. Cowan: I think so.

Commissioner Prouty: Of course, if that can not be done, you have the right to show the facts.

Mr. Cowan: And prove it if we can.

Commissioner Prouty: Yes.

Mr. Norton: I make the guess about that, that for want of the billing, it is possible some of those cars were delivered by some other line. The Santa Fe was not the deliverer of those thousand cars, perhaps.

Mr. Cowan: Mr. Williams can explain that much better than I can.

Commissioner Prouty: It is not necessary that he should give the explanation now, because that is a matter you gentlemen should get together about.

130 Mr. Williams: I desire to make a statement. I think most of this can be straightened out all right. For instance, I find in checking over those in one claim that was filed

here before, it was in the name of R. H. Dorst, he was shown as the consignor. In checking those over I find that should have been for Sam Davidson, and that was a claim of several cars. And I am sure there are some mistakes that I admit have crept into it, which can be straightened out.

Commissioner Prouty: The point is now that you and the railroads are to straighten out all you can before the Examiner comes into this at all. I simply want to know at what stage of the proceeding his services will be required, and it seems his services will not be required as to this exhibit until you and the Santa Fe have spent some further time in endeavoring to check the thousand cars that are not now located.

Mr. Cowan: I suggest it takes quite a lot of time, because we have found it impossible to employ anybody to even make those claims up. We tried that and could not do it. Mr. Williams is assistant secretary of the Cattle Raisers Association and is thoroughly familiar with it, and it would take about as long to teach somebody as to do the work himself. In the meantime he has his engagements in the work of the Association and cannot
131 devote his entire time to the matter, and that is the cause of a good deal of delay. Just as rapidly as Mr. Williams can do it, if the railroads will furnish us a check of those they have not yet been able to locate, he will take up those and see whether we can straighten them out, and the extent to which we can not.

Commissioner Prouty: You have all those now.

Mr. Cowan: Yes, Mr. Norton has furnished his and I suppose the other railroads will do the same thing. Then the controversy ought to rest only with respect to shipments as to which we cannot agree. Now, I ask the attorneys of the railroads, as they probably now know, whether it is the fact that in all cases the freight was paid by the commission company and deducted out of the account sales of the cattle, as I have stated. I presume all you gentlemen know that to be the case. Is that right, Mr. Wood?

Mr. Wood: I do not know anything about it, except what you say about it, Judge.

Mr. Cowan: I would like to call Mr. Moore, who has spent many years in the commission business. He has kept the books of this firm of Evans-Snider & Buel, and he has the books here, so as to explain for the purpose of the record and for the information of the Commissioner just what the course of pro-
132 ceeding is.

Mr. Norton: I think that was stated in the other hearing. I think our own livestock man stated that.

Mr. Cowan: I think he did.

Mr. Norton: We are anxious to get to another meeting, and you can put that in, if necessary, later.

Commissioner Prouty: I think that is the ordinary course of business. I do not think the testimony of one commission merchant would show what the course of business necessarily was with another. In other words, I do not think by calling Mr. Moore, you would necessarily obviate the necessity of calling these other commission men who kept books on these transactions, because there is no way of showing to whom that money was paid except by the books of the commission man, and it seems to me, and you must have the original book in every case.

Mr. Cowan: If required to do it, we would have to do that, as a matter of law and evidence, but the reason I brought Mr. Moore, was the suggestion made by your Honor before, that before appointing an Examiner to go into these books, the Commission would like to examine one set of books from some concern to see that we have the source of information to which
133 the Examiner can refer. Now, we have that here.

Commissioner Prouty: That was upon the proposition that the carriers were not going to check these accounts at all.

Mr. Cowan: I know that.

Commissioner Prouty: They have now checked up, or Mr. Norton for his company, has checked up these accounts as far as he can. Now, if you find you cannot locate these thousand cars by the books of the railroads, and the stock yards, and that you have to rely upon some other evidence to show the fact of the shipment, and the payment of the money, then it may be necessary to hear these commission men. But I do not think you have reached that point.

Mr. Cowan: I would like to have your Honor inquire of the other railroads here, if they agree with Mr. Norton.

Commissioner Prouty: I am about to do that. Mr. Dickinson, the Rock Island Lines delivered a great many of these shipments did they not?

Mr. Dickinson: I think the list submitted includes about 2,300 cars, and our auditor has located between 1750 and 1800.

Commissioner Prouty: Now, have you got that list checked over, so that you are in a position to show Mr. Cowan
134 what cars you have checked and what cars you are unable to check?

Mr. Dickinson: Yes, we are.

Commissioner Prouty: Does the result of your check develop that ordinarily the statement filed by the complainant is accurate?

Mr. Dickinson: I think we may assume that it is reasonably accurate. For example, if one statement shows a shipment of six cars on a given date by the party named on that slip, our records correspond to that description. Now, we cannot always be absolutely positive that there were not two shipments perhaps by

somebody else of another name, but I say we can be reasonably sure that that is a description of the shipment as claimed by Judge Cowan. Now, I have a list of all those we can not locate, made up separately.

Commissioner Prouty: You have that already made up?

Mr. Dickinson: Yes.

Commissioner Prouty: That is just what you want, Judge Cowan.

Mr. Dickinson: I would be very glad to hand it to Judge Cowan if he wants it.

Commissioner Prouty: That is exactly what he wants. Let me ask whether your people in connection with Judge
135 Cowan or his representative, will determine why you have not been able to locate those cars and make such further investigation as seems proper.

Mr. Dickinson: Yes. I will say this, that after finding from our records in Chicago that we could not locate, say five hundred cars, the auditor communicated with the agents at the points of origin shown on the statement, to see if his records showed, and those reports are not in yet. It may be that some of those will be cleared up, but as it stands now there are about 500 cars we cannot locate.

Commissioner Prouty: Assuming that you do locate a particular shipment, so you are satisfied that the shipment moved and the freight money was paid by somebody, do you intend to question the fact that the money was paid by the consignor ultimately? I understand the courts of business to be that these cattle are sold on the market by some commission men, and the freight money is paid by the commission man and deducted from the amount received from the sale of the cattle and the balance remitted to the owner, which of course amounts to a payment by the owner. Do you make any question that the consignor did in that way pay this freight?

Mr. Dickinson: I understand that that is the course
136 of business as practiced at the terminal markets at Kansas City and Chicago. Whether there are any exceptions I am not informed. Now, as to the party to whom the money is remitted, that is after this freight has been deducted from the selling price of the cattle, I have no advice on that at all.

Commissioner Prouty: Would you object to an Examiner of the Commission looking at the books of the commission merchant, and ascertaining whether the remittance was made to the person named as claimant, and if it turns out that the remittance was made to that person, would you deny that that was evidence which tended to show that the claimant paid the freight?

Mr. Dickinson: I understand we already have advised these commission men to hold themselves in readiness to let Mr. Cowan's representative look at their books. I do not suppose, in view of

that fact, we could object to an examiner of the Commission doing the same thing. Now, what he finds there, of course, can be submitted to us, and if it shows that the party named on those slips paid the freight money, or actually, I will say, bore the freight charge, I do not suppose we would deny it. I do not know whether we could admit it or not.

137 Commissioner Prouty: I did not ask you whether you would admit it, but if you would object, that that evidence would tend to show that fact, so far as that evidence is complete, you could not deny what it showed. Mr. Wright, was your line a delivering line?

Mr. Wright: We were a delivering line on 496 cars, and we have been able to check 490 out of the 496. Our auditor has made a notation on each one of the slips presented by Mr. Cowan, showing the exact weight and actual charges collected. There are some of them here in which there are various discrepancies, as for instance on sheet number 5, it shows six cars coming from Cuero, Texas. We were only able to check five cars, and our auditors or checkers went to the consignees shown by Mr. Cowan here, and their records only showed five cars received, so we assume there must be a clerical error in making out such shipments as that.

Commissioner Prouty: Well, you located substantially all the cars?

Mr. Wright: Yes.

Commissioner Prouty: Do you make any question as to the right of the consignor to cover those overcharges, or rather that he is to be found to be the person who paid the over-

138 charge?

Mr. Wright: We admit that the freight charges were paid and believe that the statements as rendered by Mr. Cowan are substantially correct, although as to who are the consignors there is some question.

Commissioner Prouty: In none of these cases have you information, Mr. Cowan, as to the other lines over which these shipments move. What is your position about that?

Mr. Cowan: Well, our position is that as a legal proposition, the delivering line which collects the freight is liable to the shipper. The Commission has held that. I think either line is liable, either the originating line or any party to the rate, which is a joint rate, and that is the case in all these instances. But the delivering line, being the one which in all cases collects the freight, I think I am safe in saying in every case, certainly in ordinary market shipments that is the case, the delivering line is liable, and it is a matter between them and their connections. We have given so far as we can, the originating line and the route over which the shipment moved, but we are not able to do that in all cases.

Mr. Wright: There are discrepancies in your state-
139 ment on that.

Mr. Cowan: There were many cases where we could not get it.

Commissioner Prouty: Do you ask an order against anybody except the delivering line?

Mr. Cowan: Not except in cases of shipment over the Southern Pacific, where the M. L. & T. was not made a party, and in that case we will have to ask for an order against the originating line.

Commissioner Prouty: Mr. Norton, in this case would you desire to show the lines who participated in various shipments and have the Commission enter and order against all the lines?

Mr. Norton: I have not thought that out very much since the last hearing.

Commissioner Prouty: You may do just as you see fit. You probably have in your possession the information and could show all the lines over which that shipment moved.

Mr. Norton: I should say that if an order were entered against the delivering line, that they could have within their own possession the means of apportioning the amount.

Commissioner Prouty: Undoubtedly they could.
140 Now, if you regard it a matter of any importance to have the order entered against all the lines participating in each shipment, and will furnish the Commission the necessary information so we may know by what lines the shipment moved, we will make the order in that way; but unless you furnish that information we can only make an order against the delivering line. I will say that as to all carriers.

Mr. Norton: I will say this, as to this and some other questions you have put, that after Mr. Cowan has made an examination of the books of the commission companies as he proposes to do, there will probably be another hearing, a short one at any rate, before the Commission, to take into account what has been discovered.

Commissioner Prouty: I apprehend that before we make an order there will be some other hearing at which I will be present, but there will very likely be no hearing at which I will attend until our Examiner is able to state the account against every railroad. If you want the account stated, not only against your road but against the participating roads, you should make up your mind and furnish us the information as to what the participating roads are.

Mr. Norton: Very well.

Mr. Wright: There are one or two cases in our list
141 where we find a different consignor entirely from what Mr. Cowan stated. We find that the shipment was made

from the point stated via the lines stated and delivered on the date, but an entirely different consignor.

Commissioner Prouty: Well, it appears that in some cases, perhaps a good many cases, the owner was not the consignor. As I understand the matter, Mr. Cowan has obtained the name of the owner from the books of the commission men. Is that right, Mr. Cowan?

Mr. Cowan: That is correct.

Commissioner Prouty: And it is probable that the name of the owner is correctly stated. The consignor might not be correctly stated because the name of the consignor might not agree with that of the owner. Mr. Wood, your line delivered some of these shipments, did they not?

Mr. Wood: Yes, your Honor. We were furnished with an exhibit purporting to show the movement of 4,607 cars. We have undertaken to check each one of the cars shown in this exhibit and have located a movement of all except 865 cars, and we have noted on each sheet by a check mark those cars where the movement was located, and by cross marks, those cars where the movement could not be located; and we have appended a
142 little note to the exhibit that explains those markings, so that in the examination the exhibits may be entirely clear. I had assumed that in the making of this check the auditor had checked as against the names of the consignors shown as well as the movement of the cattle, and that where there was any discrepancy that he had noted that. But I have received a letter from him this morning, after these things had been delivered to me, stating that there were very many discrepancies between the name of the consignor as shown on this exhibit, and the name of the consignor as shown on the way bill, so that as checked these show that cars did move between those points and that the rate at the amount named in the exhibit was collected.

Commissioner Prouty: Suppose, Mr. Wood, that the books of the commission man showed that settlement with respect to those cars was made with the person who appears as the claimant; would you be disposed to deny that that tended to show that the claimant paid that freight?

Mr. Wood: I think that would be a question of law about which I would not like to make a definite answer at the present time. My opinion would be this, that if, as your Honor suggests, the books did show that beyond doubt, that the settlement of
143 this identical car was made to the party named as claimant, of course that would be proof of that fact; but its legal effect might be another matter.

Commissioner Prouty: Will your auditor take a hold, with Mr. Cowan's representative, and endeavor to determine why it is that you are unable to locate these other 800 cars?

Mr. Wood: Yes, sir. I may say that without the receipt of

further information, I think any further work upon the part of our auditing department would be fruitless.

Commissioner Prouty: Your auditing department could explain to Mr. Cowan, or his representative, what additional information would be required.

Mr. Wood: Yes.

Commissioner Prouty: And that information, if possible, might be furnished.

Mr. Wood: That I understand is the information Mr. Cowan can not furnish, the expense bills or way bill reference, or car number.

Commissioner Prouty: Really the essential thing is the car number, is it not?

Mr. Wood: Yes.

Mr. Norton: I think probably those corrections
144 cannot be made because, as I stated, our auditors who went over a space of three years and did not find them, so if Mr. Cowan were to give the car number, undoubtedly we would find a vacant place where that number is. I doubt whether those missing cars on our line can be located.

Commissioner Prouty: It would not be profitable for us to talk about it here, because none of us know anything about it.

Mr. Norton: No.

Mr. Wood: I also have another exhibit which was filed, or submitted to the Chicago & Eastern Illinois Railroad, with respect to cars delivered at Chicago, and this exhibit has likewise been checked and the result of the check shows upon the face of each page. All but 23 cars out of a total of 210 were located.

Commissioner Prouty: Mr. Fletcher?

Mr. Fletcher: The Illinois Central is shown here to be the delivering line for 113 cars. That statement has been checked and our auditing department finds all of those cars, and the only correction that has been made is to correct the weights. The minimum weight was shown uniformly, and we have corrected those weights so as to indicate 68,000 pounds in excess of the minimum. There
is also appended here a little statement showing these
145 cars and the weights and so forth and the correcte l weights, and the amount of reparation which would be due, upon Mr. Cowan's theory, $20.47 more than the claims, and I submit that.

Commissioner Prouty: Now, Mr. Fletcher, are you disposed to question the fact that the claimant, or the person named as claimant, in these cases, paid the freight?

Mr. Fletcher: We are without any information at all on that.

Commissioner Prouty: Suppose the books of the commission man show that the remittance was made to that individual.

Mr. Fletcher: Without committing myself now, which I cannot be expected to do without reflection, it would seem to me, if the

books of the commission merchant showed the payment by the shippers, or owners, and there could be sufficient information to identify that with these things here, it would all have to be proved as to whether the books referred to the same shipments here shown, I would say that would be competent evidence. Whther it would establish it or not, I would not undertake to say now.

Commissioner Prouty: My information or understanding is that the information has in all cases been obtained from
146 the commission men.

Mr. Cowan: I will ask Mr. Williams that. I think that is true. Possibly there are a few shipments where the information was otherwise obtained for these shipments since August, 1906. Can you state, Mr. Williams, whether the information was obtained in all cases from the commission company?

Mr. Williams: Not in all cases. I think in a few cases it was furnished by the party himself. For instance, you take Swift & Company and Morris & Company, they furnished us information as reliable as that by the commission companies, and a few of the larger shippers also furnished it.

Mr. Cowan: In the main, the source of information was the commission company's books?

Mr. Williams: Yes.

Mr. Fletcher: I would like to make an additional observation, that I understand from Mr. Williams' statement, that the person named as consignors on these slips were in most cases obtained from the books of the commission companies, and that they in most cases represent the true owner of the shipment. I also have in mind the statement made at the previous hearing and here, that in
147 many cases these consignors who were named on the bill were not the real owners. We think in addition to the statement made by Mr. Wood about the auditor having expressed some doubt whether the real consignor was named, that shakes my confidence in the checking of all these slips, as to whether the consignor there named is the consignor shown in the billing, or whether it is the real owner.

Commissioner Prouty: Well, the name of the claimant has in all cases been taken from the books of the commission man, as I understand Mr. Cowan.

Mr. Cowan: In all cases except the few instances like he mentioned, like Morris & Company and Swift & Company.

Commissioner Prouty: The name of the claimant shows the person to whom the payment was made by the commission merchant; that is to say the owner of the cattle. Now, it appears in some cases, for matters of convenience, the owner was not also the consignor, but it would occur to me that the claimant is probably correctly represented, although the consignor might not be.

Mr. Fletcher: I wondered if there was any objection to our withholding the filing of that list until we could have that partic-

ular fact checked by the auditing department, as to
148 whether the consignor named there is the consignor named
in the billing, or whether they just took it for granted
that he was.

Commissioner Prouty: I suppose there is no objection to that.

Mr. Fletcher: They can be filed now if it is necessary, but I would like to have that fact ascertained by our line.

Commissioner Prouty: But that should be done right away.

Mr. Fletcher: Yes.

Commissioner Prouty: I suppose you have those way bills separated from the others in some file, so you can complete the check in a short time?

Mr. Fletcher: Yes.

Mr. Cowan: I wish to suggest to counsel that if the checking that has been done, instead of being now filed with the Commission, be turned over to Mr. Williams, so that he can locate, as well as he can, the unlocated shipments, we will go right to work on that and undertake to furnish the information as nearly as we can to the railroads themselves, and in most cases I am sure we will be able to locate the shipments which have not been located as being made by
the railroads. Of course, the Commission companies may
149 have made mistakes and must have done so undoubtedly,
but they put in no claims, of course, except where they paid the freight. There is no reason why they should not have done so, and they made mistakes probably in regard to the names of the railroads in some instances, not in regard to the man who shipped the cattle, because they cannot make mistakes of that kind. The man who ships knows it and wants to get his money back.

Mr. Wright: There is one mistake in ours just like that.

Mr. Cowan: Well, the owner can tell us undoubtedly, because he always got his money or raised a row about it.

Mr. Norton: I had in mind, in answer to the Commissioner's suggestion as to whether proof of the remittance of the balance to John Doe would show that John Doe was entitled to reparation—

Commissioner Prouty: No, was the owner of the cattle and paid the freight.

Mr. Norton: Well, yes. It might be that John Doe was the shipping agent for a lot of people in that country and he himself, individually, would not be entitled to it, and would be acting merely in a representative capacity. There might be many instances in
which it would not necessarily follow, perhaps, that
150 that individual was entitled to reparation, and that was
one reason I hesitated about my answer on these questions.

Commissioner Prouty: Mr. Scott.

Mr. Scott: I am not interested in any of the claims that Mr Cowan represents, but I desire to call Your Honor's attention to

an entirely different set of claims. Perhaps it would confuse the record at this point.

Commissioner Prouty: You say you are not interested in any of the claims of Mr. Cowan.

Mr. Scott: No, but I have another matter which I wish to submit.

Commissioner Prouty: Mr. Scandrett.

Mr. Scandrett: We are a delivering line only at New Orleans, and the M. L. & T., as stated by Mr. Cowan, was not a party to the original case. Therefore, we feel there has been no finding and never was a finding by the Commission as to the unreasonableness of the rates over the M. L. & T., or any connection with the M. L. & T. over other lines. We met the rate which the Commission fixed for the I. & G. N., I believe, which was the delivering line

151 We nevertheless have checked all the claims presented by Mr. Cowan to us, which total 515 cars, and we were able to locate all but 186. The auditor made his check and then each agent at the point of origin was addressed by the general freight agent, and asked if he could locate any shipments by this consignor within a period of two weeks of the date given in Mr. Cowan's claim, and in that way a few others were located; but as to 186 we have been altogether unable to locate them. We feel that under the law there would be no authority, not only to enter an order against the M. L. & T., or any line which was a party to the joint rate over the M. L. & T.

Commissioner Prouty: Mr. Cowan states there is no authority to enter an order against the M. L. & T. His position is that the Commission may enter an order against the other carriers making up that route or line. Of course, that question you can save and undoubtedly present it by some further argument to the Commission.

Mr. Scandrett: Yes.

Commissioner Prouty: Now, is any other railroad representative here upon whom you made service of these exhibits?

Mr. Cowan. The M. K. & T.

Commissioner Prouty: Yes, and a very important

152 one.

Mr. Burg: In the 661 sheets that were submitted to the M. K. & T. there were 7,835 cars, and we have been unable to locate 702 of the 7,835. Those sheets where we have located the shipments we have made no notation whatever, but on the sheets we have been unable to check them we have made the proper notation. They read something like this: "Unable to locate any billing for these cars." Otherwise the shipments have been located.

Commissioner Prouty: Your company, if it received the necessary information to enable it to locate the remaining shipments, would be willing to do so?

Mr. Burg: Certainly.

Commissioner Prouty: And what do you say as to the proof required to show that the claimant has paid this freight? Is your company familiar with the manner in which this business is done?

Mr. Burg: Not at all; at least I am not.

Commissioner Prouty: We could not perhaps say anything more profitably about this matter at this hearing, then. Is there anyone else, Mr. Cowan?

Mr. Cowan: Not that I know of.

153 Commissioner Prouty: Now, Mr. Scott, you may offer whatever statement you desire to.

Mr. Scott: I appear for the Colorado & Southern Railway, and there has been filed against that company a claim of the American Live Stock and Loan Company, involving certain shipments of cattle to Denver, the rates on which were involved in this same proceeding. These shipments were called to the attention of the Interstate Commerce Commission in a letter dated March 5, 1912, from E. E. Whitted, general solicitor of the Colorado & Southern Railway Company, and I take it it will not be necessary for me to read that letter into this record. It is somewhat lengthy.

Commissioner Prouty: No, you need not read it.

Mr. Scott: And I suppose it is in the Commission's files. The claim relates to 76 cars shipped from various points in Texas to Denver, Colorado, Troublesome, Colorado, and Douglas, Wyoming. The total overcharge claimed amounts to $376.26. Those cars have all been checked and the Colorado & Southern, without conceding the right to reparation, concedes that the charges were paid by the claimant, the American Live Stock & Loan Company. I think perhaps that is all I need to state at this time.

154 Mr. Cowan: If Your Honor please, I wish to again call attention to the fact, if I have not already done it, that there are some claims which in checking over this mass of data, have been overlooked by one accident and another; but they are filed with the Interstate Commerce Commission. There is not a very large amount of them, and it is difficult, of course, for us to go to Washington and undertake to go through them. We have had at one time a card index of all these claims made up, but in moving the office of the Cattle Raisers Association from one building to another at Ft. Worth, some of them got lost or misplaced, and Mr. Williams has found there are some claims which have not yet been made up in the form in which he has presented these, although they are on file with the Commission. They do not amount to much. Of course, we would like to furnish these to the delivering lines. I would like to ask that all of this checking be delivered over to Mr. Williams, to be subsequently filed after we have done the work, which will correct all that we can correct, and we will proceed with it as rapidly as we can and give the railroads the information from time to time as to what errors we find, and why.

Commissioner Prouty: There ought to be a limit some time,

Mr. Cowan, to the putting in of these claims. How
155 long before you can file an exhibit showing the amounts which you claim to recover against each road, in addition to the exhibits already filed by you?

Mr. Cowan: Very shortly. They are so small that it seems almost unnecessary to mention them, but Mr. Williams asked me to mention it.

Commissioner Prouty: I understood Mr. Williams to say that he desired to file claims which aggregated some $12,000.

Mr. Cowan: Those are already prepared.

Commissioner Prouty: Those have not yet been filed?

Mr. Cowan: No, those have not yet been filed, but he has them here to file, and has furnished copies to the railroads, I believe. He says he has them ready to furnish.

Mr. Norton: I understand he is to furnish us another book apiece to check, which we have to check as we have this?

Commissioner Prouty: Have you an exhibit in addition to that book, showing what the claims are?

Mr. Williams: Yes.

Commissioner Prouty: You may file the exhibit with the Commission and deliver the book over to Mr. Norton, and so with all the other roads. You may file the exhibit with the Commission and deliver the book to the attorney for that
156 carrier. Have you those exhibits here?

Mr. Norton: While he is looking for those, I would like to get the same favor that Judge Fletcher asked for. I was talking with the auditing department and they neglected to draw off certain facts and data, the number of the billing and so forth, and I would like to take this long enough to have that done.

Commissioner Prouty: Counsel may in all cases withdraw these checking sheets, or checked sheets. How long will it take you to do that?

Mr. Norton: I was going after the same information that Mr. Cowan wanted. Probably several days.

Commissioner Prouty: Would ten days be long enough?

Mr. Norton: Oh, yes.

Commissioner Prouty: Within ten days then, you are to send those documents to Mr. Williams at Ft. Worth. Any other carrier who desires may withdraw this list for the purpose of further examination.

Mr. Cowan: I presume that the proof that would be made by Mr. Moore, if he were placed upon the stand, is practically waived. We have the books here.

Commissioner Prouty: We will see whether or
157 not it is waived, but I do not understand they insist upon it now, or rather the suggestion is that the Examiner of the Commission may examine these books.

Mr. Norton: He may be well able to do it then and report.

Commissioner Prouty: You may proceed to file those exhibits, Mr. Williams.

Mr. Williams: I desire to file here, in connection with the first filing, I suppose the number will be Complainant's Exhibit No. 2, as it is a supplement to those filed at the September hearing, this exhibit, which contains a total of 2,070 cars, with an overcharge of $12,706.31.

Commissioner Prouty: That embraces the cars against all delivering railroads?

Mr. Williams: Against all the roads prepared up to this time, made out in exactly the same form as those presented at the former hearing.

Commissioner Prouty: You may file that as an exhibit.

(The statement so offered and identified was received in evidence and thereupon marked "Complainant's Exhibit No. 2, received in evidence January 24, 1913" and is attached hereto.)

Commissioner Prouty: You will furnish the slips themselves to the railroads, Mr. Cowan, and they will proceed to
158 check them up as fast as possible. Now, within sixty days you should file an additional exhibit showing all the claims that you intend to make at any time.

Mr. Cowan: We will. There will be very few, and we can do it even sooner than that, I am sure. It is only mainly to keep some member of the Association from getting mad, that Mr. Williams wants to file them.

Commissioner Prouty: As soon as you have done all you can toward checking these with the railroads, you will notify the Commission and we will at once have the Examiner go to work for the purpose of stating these accounts. I suppose in doing that it will be necessary for him to do part of his work in Chicago, where the books of the commission merchants are, and part in Kansas City and perhaps part in St. Louis.

Mr. Cowan: Yes, it will have to be done—there are a very small number in Chicago, but mainly in St. Louis and Kansas City.

Commissioner Prouty: Is there anything further, gentlemen? If not, this case will stand continued.

Whereupon, at 11 o'clock A. M., the further hearing in this matter was continued.

1 BEFORE THE
INTERSTATE COMMERCE COMMISSION

Docket 732.

THE CATTLE RAISERS ASSOCIATION OF TEXAS
VS.
THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, ET AL.

Chicago, Illinois, October, 17, 1913. 10 o'clock A. M.

Before:

HON. CHARLES A. PROUTY, *Commissioner.*

Met pursuant to notice.

Appearances:

S. H. Cowan (Ft. Worth, Texas), appearing for complainant.

C. S. Burg (St. Louis, Missouri), appearing for the Missouri, Kansas and Texas Railway Company and the Missouri, Kansas and Texas Railway Company of Texas.

F. E. Andrews (1011 Railway Exchange Bldg., Chicago, Ill.), appearing for the Atchison, Topeka & Santa Fe Railway Company.

W. F. Dickinson (1025 LaSalle St. Station, Chicago,
2 Illinois), appearing for the Rock Island Lines.

Fred G. Wright (604 Missouri Pacific Bldg., St. Louis, Missouri), appearing for Missouri Pacific Railway Company and St. Louis Iron Mountain & Southern Railway Company.

A. P. Humburg (Park Row, Chicago, Illinois), appearing for Illinois Central Railroad Company.

3 INDEX OF WITNESSES.

A. C. Williams 10

INDEX OF EXHIBITS.

Complainants' Exhibit A 14

4 PROCEEDINGS.

Commissioner Prouty: Gentlemen, we have set down for consideration at this time two matters. The first is the matter of reparation in what is known as the Texas Cattle Raisers case, Docket No. 732, *Cattle Raisers Association of Texas* v. *The Missouri, Kansas and Texas Railway Company, et al.:* and the second matter is a conference touching rates which were established between interior Iowa points and various western destinations. We will take up first the Cattle Raisers case. Who appears for complainant in that case?

Mr. Cowan: S. H. Cowan of Ft. Worth, and A. C. Williams, assistant secretary of the Cattle Raisers Association.

Commissioner Prouty: What are the appearances for the defendants?

Mr. Dickinson: W. F. Dickinson, for the Rock Island Lines.

Mr. Wright: F. G. Wright for the Missouri Pacific and St. Louis & Iron Mountain.

Mr. Burg: C. S. Burg for the M. K. & T.

Mr. Humburg: A. P. Humburg for the Illinois Central.

Commissioner Prouty: Are there any other appearances?

(No response.)

Commissioner Prouty: You may proceed, Mr. Cowan.

5 Mr. Cowan: We had a trunk with certain papers sent down from the hotel as we supposed about an hour ago. I do not believe it has arrived, however.

If your Honor please, at the last hearing of this case we then had up the matter of the railroads checking the list that Mr. Williams, Assistant Secretary of the Cattle Raisers Association made up, being an itemized and detailed account of the shipper against the delivering line of railroad. Mr. Williams has taken the statements as checked by the railroads and has made up an alphabetical list to show what claims the railroads have in their checking admitted, and another list to show those claims which they did not admit or deny; they simply did not admit.

Commissioner Prouty: And those documents are in the trunk which is on the way here?

Mr. Cowan: No, Mr. Williams says he has a list here.

Mr. Williams: Well, the trunk is here, too, now.

Mr. Cowan: Very well. Now, we want to submit to the Commission as the basis of a request for an order of the Commission to direct the payment of those claims which the railroads themselves have admitted, this list. Then we want to submit this other list as the basis for a request that the Commission

6 appoint an examiner to hear the testimony to prove those claims which they have not admitted.

I may state now, in order to save time, that we believe the claims which the railroads have not checked as having admitted, arise from two or three different sources, the most of important of which probably is that many of the shipments moved on live stock shipping contracts. All the shipments, I might say, moved on live stock shipment contracts. That is considered the billing. It is not the way bill but it is the contract of shipment.

The party who signs that contract goes with the shipment, at least he is supposed to do so, sleeps in the caboose, and sometimes he is a merchant but his name is the only one that appears on that billing. So the railroad companies' records may show John Smith as being the shipper, but the commission com-

pany at the market is always the consignee. The commission company always receives the shipment. The commission company always pays the freight out of the receipts from the sale of the cattle. Now, we think that the failure of the railroads to have checked all of our claims is due to the fact that their own records, that is to say the shipping record, simply shows the name of the party whose name is signed to the contract, and
7 the Commission companies in making up the claims for us to present, have made them up in the names of the owners, disregarding entirely the mere caretaker who is along with the live stock.

I understand from Mr. Williams, after his very arduous work on this matter, he finds that about 75 per cent of the shipments that have been made, taking the aggregate, against the delivering lines of railroad, of which there are very few, have been admitted to be correct. Those which are not so admitted contain no notations as to why, if they knew why, they were not able to check the claim as being correct, and Mr. Williams thinks that about 90 or 95 per cent of those claims which have not been checked by the railroads are claims of owners whose names do not appear on the billing, that is the shipping contract, which the railroads register in their accounts, although the money in all cases, as I understand, is paid by the commission company to the stock yards company, the stock yards company presenting to the commission company on delivery a way bill.

Now, as to these way bills it might appear that it was easy to find them. It is not. These way bills are bundled up by the stock yards company and piled up in a pile somewhere,
8 and there are hundreds of thousands of them in a week, and it is very difficult to go into the question of finding those way bills.

We can prove, however, by the commission companies, in all those cases where the railroads have not checked the claims, that they made up and furnished from their books to the Cattle Raisers Association a correct list of all the shipments made, including those which have been checked and those which have not been. We here propose to produce a tabulated alphabetical list of those claims which the railroads themselves have admitted, and on that we would like to have an order of the Commission; and we think we are entitled to it, to direct the railroads to pay those claims; and as to those which they have not admitted, we wish to ask the Commission to appoint an examiner to take the testimony of the commission companies at four or five different points, to prove the fact of the shipment. We cannot in all cases show the car number, neither can we show the billing, but we can prove the fact that the commission company paid the freight and the shipment was made on a certain date. We do not think we ought to have to go further.

I understood your Honor on the previous hearing to
9 express the opinion that if we proved we made the shipment we did not have to prove the car number. What we needed to do was to furnish the railroad company with as much information as we could so they check these up. They have done that, as I say, with 75 per cent of the claims, or somewhere around that per cent.

Now, we ask the Commission to hear a statement from Mr. Williams as to the making up of these claims, and to file this tabulation we have here, furnishing the other side with a similar list taken from their own checking of those which they have admitted, and then we ask the Commission to provide us with the means of obtaining the testimony on the others, which to my notion would be the appointment of an examiner to hear our testimony on those claims. It seems entirely unnecessary to take testimony with regard to those claims which the railroads themselves have admitted in the checking.

Now, they have done that in various ways. When your Honor submitted the matter to the railroads to check up the claims, while they have not written out at length, as a general thing, the words "We admit," and so on, they made a check mark which is well understood by the auditors of the railroads,
10 and by Mr. Williams, to show which of the claims they have admitted.

Mr. Williams has made a tabulation, as I say, of those claims and I wish to have Mr. Williams sworn and present that tabulation of those claims which have been admitted.

Commissioner Prouty: Mr. Williams has already been sworn, and perhaps the easiest way to get at what the Commission will want to know in this matter is to let Mr. Williams take the stand and make his statement, and he may do that now.

A. C. WILLIAMS, heretofore called as a witness, resumed the stand and testified further as follows:

Direct Examination.

Mr. Cowan: Mr. Williams, you are the assistant secretary of the Cattle Raisers Association?

Mr. Williams: I am, yes, sir.

Mr. Cowan: And you have been with the association how many years?

Mr. Williams: About eight years.

Mr. Cowan: You have had entire charge of the matter of these claims?

Mr. Williams: I have, yes, sir.

Mr. Cowan: And you have tabulated all these claims?

Mr. Williams: Yes, sir.

11 Mr. Cowan: The commission companies selling

livestock on the markets have furnished the Cattle Raisers Association a list of the claims, of their purchases?

Mr. Williams: They did, yes, sir.

Mr. Cowan: Those claims were originally filed and are now on file with the Interstate Commerce Commission?

Mr. Williams: The tabulation is on file, yes, sir.

Mr. Cowan: You have retained duplicates in your office?

Mr. Williams: Yes, sir.

Mr. Cowan: Those duplicates are correct according to the original claims filed with the Commission?

Mr. Williams: Yes, sir.

Mr. Cowan: They have been furnished to you through the regular course of business?

Mr. Williams: Yes, sir.

Mr. Cowan: The commission companies are the universal agents for the collection and payment of freight out of the proceeds of cattle shipped to them?

Mr. Williams: They are.

Mr. Cowan: They do not pay any regard to the man who is care taker of the live stock, but only make their entries in their books against the owners of the cattle?

12 Mr. Williams: Yes, sir.

Mr. Cowan: They render to the owners when they sell the cattle, an account sales?

Mr. Williams: Yes, sir.

Mr. Cowan: Press or other copies of which are retained in their office at the offices in Kansas City, St. Louis, Chicago, St. Joseph, New Orleans and other markets?

Mr. Williams: Yes, sir.

Mr. Cowan: From their books they have made out and furnished to you these lists of claims?

Mr. Williams: Yes, sir.

Mr. Cowan: Those lists show the date of the shipment, the owner, the amount of freight paid, and the railroad to which the freight was paid.

Mr. Williams: Yes, sir.

Commissioner Prouty: Do they show the point of origin?

Mr. Williams: They show the point of origin. In a few instances one or two of the commission companies failed to show originally the point of origin. We took that up with the commission companies and with the shippers and that was supplied later.

Commissioner Prouty: So that in all cases the point

13 of origin appears?

Mr. Williams: The information is complete, yes, sir.

Mr. Cowan: You obtained from the Interstate Commerce Commission a list of the rates from every station in Texas, Oklahoma and New Mexico that is involved in these claims?

Mr. Williams: Yes, sir.

Mr. Cowan: That came from the traffic department of the Interstate Commerce Commission?

Mr. Williams: Yes, sir.

Mr. Cowan: Containing a large number of sheets, which showed the rate from every station?

Mr. Williams: Yes, sir.

Mr. Cowan: The claims you have made up were made on the advances that were made in the rates in March, 1903, or during the year 1903?

Mr. Williams: During the year 1903, yes, sir.

Mr. Cowan: Which are the rates condemned by the Commission in its decision in the Cattle Raisers case?

Mr. Williams: That is my understanding.

Mr. Cowan: And the amount of claims you have made are based upon the advance that was condemned by the Commission?

Mr. Williams: Yes, sir.

14 Mr. Cowan: You have not included interest.

Mr. Williams: No, sir.

Mr. Cowan: But you give the date of the shipment so that interest may be computed just as a mathematical computation?

Mr. Williams: Yes, sir.

Mr. Cowan: When we had the hearing here before, as you heard me say to the Commissioner, these claims, as you had made them out for each individual shipper, were submitted to the various railroads interested?

Mr. Williams: Yes, sir.

Mr. Cowan: After they had made a check of these claims they were returned to you?

Mr. Williams: They were.

Mr. Cowan: Have you made a tabulation of all the claims which the railroads themselves have admitted in their checking as being correct?

Mr. Williams: I have made a tabulation of all the checkings reported back to me by the various railroads, yes, sir.

Mr. Cowan: Will you produce the tabulated alphabetical list of those claims?

(The list so offered and identified was received in evidence and thereupon marked "Complainants' Exhibit No. A, received
15 in evidence October 17, 1913, Witness Williams," and is attached hereto.)

Mr. Cowan: Take some one, no matter which one, and read it to the Commissioner.

Commissioner Prouty: Just let me see that list before he commences to read.

(Document handed to the Commissioner.)

Mr. Cowan: For the purpose of the record, Mr. Williams, take some one illustrative case and read what your tabulation shows,

the head line and the indexes, whatever you have there which shows what it means.

Mr. Williams: I have a claim here for Mrs. C. Adair. I find that on Exhibit No. 1, which was filed here last September, the Santa Fe Railroad had checked 135 cars, being their claim numbers three to six, and that the overcharge figured by them on the weights and the car numbers given, was $918.69.

On the second exhibit which was filed in January here, we had sixteen cars against the Santa Fe, their claim numbers one and two of that hearing, and the overcharges fixed by them were $110.16, making a total of the two exhibits, for the Santa Fe, of 151 cars, or $1028.85 overcharge.

Commissioner Prouty: By overcharge, you mean a
16 charge above the rate found reasonable by the Commission?

Mr. Williams: A charge above the rate found reasonable by the Commission, yes, sir.

Mr. Cowan: That is three cents per hundred; and those shipments were made from where?

Mr. Williams: This will not show that. By referring to the other it will.

Commissioner Prouty: I want you now, to go back, so I may see just exactly what has been done—I want you to go back, if you can, and refer to that item and your exhibits one and two.

Mr. Williams: Do you mean on the summary or on the itemized statement?

Commissioner Prouty: I want you to give me now if you can, what you filed with the Commission by way of a claim.

Mr. Williams: You only want to know the total?

Commissioner Prouty: What I want to do is to see exactly what has been done by the Commission and by the Santa Fe in checking those claims. I want you in the first place to let me know what you filed with the Commission, if you have it; I want to know in the next place, what you gave the Santa Fe, and I want to see then what the Santa Fe did with the claim filed with it.

17 Mr. Williams: I find that on the first filing we filed for Mrs. Adair 173 cars, amounting to $1141.80. Of that first filing they checked 135 cars.

Commissioner Prouty: Just a minute now; you file with the Commission now a claim for 135 cars.

Mr. Williams: Yes.

Commissioner Prouty: In how great detail was that claim filed?

Mr. Williams: I will get that so as to show you exactly. Here is the copy that was filed with the Santa Fe showing the totals and showing also their checking and what they supplied. We filed a copy of this with the Commission.

Mr. Cowan: But that is all in addition with the original filing with the Commission?

Mr. Williams: We filed a tabulated statement with the Commission.

Commissioner Prouty: You filed originally a tabulated statement with the Commission showing that 173 cars were shipped by Mrs. Adair?

Mr. Williams: Yes, sir.

Commissioner Prouty: Now then, what did you
18 serve on the Santa Fe?

Mr. Williams: This right here. (Indicating.)

Commissioner Prouty: Where are the 173 cars? Is this a list of the 173 cars?

Mr. Williams: Here it is right here. These four sheets cover it, the entire bunch. Part of those were made in Kansas City and St. Joseph—

Commissioner Prouty: Speak a little louder so that the stenographer can hear you. You say that these papers which I am looking at were the papers served on the Santa Fe?

Mr. Williams: At the first hearing, here, yes, sir.

Commissioner Prouty: Were they the papers from which the Santa Fe made their checking?

Mr. Williams: Yes, sir.

Commissioner Prouty: You say that the Santa Fe admitted the movement, or admitted 135 of these cars; what do you mean by admitted 135 of these cars?

Mr. Williams: I mean by that that they furnished us according to their own records, way bill references, car numbers, weights and so forth, on 135 cars which they considered to be the cars covered by those statements.

Commissioner Prouty: What part of these papers
19 were furnished to you by the Santa Fe?

Mr. Williams: These slips here (indicating).

Commissioner Prouty: The slips in typewriting here?

Mr. Williams: The slips on which the way bill of references, car numbers and so forth, appeared.

Commissioner Prouty: Now, the first item on the first one of these sheets is headed "way bill," the date is "9/8/8." What does that mean as you understand it?

Mr. Williams: September 8, 1908.

Commissioner Prouty: And the number of the way bill is what?

Mr. Williams: 1335.

Commissioner Prouty: And the initial of the cars?

Mr. Williams: A. T.

Commissioner Prouty: That is an Atchison car?

Mr. Williams: Yes.

Commissioner Prouty: And the number?

2
7
7

Mr. Williams: 51,282.

Commissioner Prouty: And from what point?

Mr. Williams: From Hagan, Texas.

Commissioner Prouty: And to what point?

Mr. Williams: Kansas City.

Commissioner Prouty: And the weight was how much?

20 Mr. Williams: 20,900 pounds.

Commissioner Prouty: And the freight paid how much?

Mr. Williams: $61.65.

Commissioner Prouty: And what would be the overcharge on that item?

Mr. Williams: It would be three cents a hundred.

Commissioner Prouty: Three cents per hundred pounds?

Mr. Williams: Yes.

Commissioner Prouty: That is the information which was furnished you by the Santa Fe?

Mr. Williams: By the Santa Fe, yes, sir.

Commissioner Prouty: And the Santa Fe has furnished you that information as to 135 cars of the 173 cars which you claim were shipped by Mrs. Adair?

Mr. Williams: By Mrs. Adair, yes, sir.

Commissioner Prouty: Are all the checkings of the Santa Fe made out in that same way?

Mr. Williams: They are all on the same order, yes, sir; with the Santa Fe.

Commissioner Prouty: So that the items put down in your tabulation as against the Santa Fe are all admitted by the Santa Fe in the same detail as these items are?

21 Mr. Williams: In this detail, yes, sir. My items shown on there are taken from their checking, giving their same claim numbers and figures.

Commissioner Prouty: They show here certain cars, they show the date of the shipment, the initial of the car, and so forth. Do those cars correspond to the detailed statement which you filed? In other words, can you identify 135 of the cars with respect to which you filed a claim, as those 135 cars?

Mr. Williams: I have not attempted to identify them that way. I took it for granted that they acknowledged those claims by furnishing us with this information, when we filed it with them.

Commissioner Prouty: There are 173 of them and they admit 135. There would be 38 more cars?

Mr. Williams: Yes, sir; 38 more cars.

Commissioner Prouty: How are you going to identify those 38 more cars?

Mr. Williams: That can be easily done by referring to this

(indicating), when it comes time to take up and pick out those that are not checked.

Commissioner Prouty: That is a matter for future
22 proof?

Mr. Williams: Yes.

Commissioner Prouty: I am simply inquiring now how you do propose to do that. But, at any rate, they have admitted in detail the movement of 135 cars on account of that claim?

Mr. Williams: Yes.

Commissioner Prouty: Now, have the other roads which you say have checked up these cars, done it in the same way or with the same detail?

Mr. Williams: Most of them have; some have not. The Katy furnished a checking and they gave no way bill references or car numbers, nor did the Frisco. For instance, you see this claim here—

Commissioner Prouty: With reference to what company do you speak now?

Mr. Williams: Claim for O. T. Allen.

Commissioner Prouty: No, what company?

Mr. Cowan: The M. K. & T.?

Mr. Williams: The Frisco, this is. There is a claim made out against them on the first filing, which they number as 069849, and down here I find O. K. printed there in red. I naturally take it for granted that they say that claim is correct as presented.
23 Commissioner Prouty: Let me see that, please.

(Document handed to the Commissioner.)

One of the first claims I find here is O. T. Allen's account with the St. Louis, San Francisco, etc. Here is a typewritten slip which says "Unable to locate four cars on statement of 8 cars." What is there here which shows what cars are located and what are not located?

Mr. Williams: Why, here on the bottom of the statement we find a cross and a circle around it, and opposite that it says "Four short." Naturally we take it for granted, by referring to the red cross up here on the statement, that it will identify those cars they have not checked, and we find those there, one, two, three, and one short on this, which makes four cars.

Commissioner Prouty: Here is one shipment of two cars which were delivered August 24, 1907. The rate paid was 26 cents. The total amount of the overcharge $28.60. They located one of those cars. What is there to show how much that one car contained and how much the other car contained?

Mr. Williams: All of these Frisco claims, in the absence of any detailed information, were made out on the minimum carload weight of 22,000 pounds.

24 Commissioner Prouty: So you only claim the minimum?

Mr. Williams: The minimum, yes, sir.

Mr. Cowan: We never made any claim above the minimum because of the difficulty in trying to get the exact weight.

Commissioner Prouty: These slips were passed over to the Frisco Road by my direction, as I remember it?

Mr. Williams: Yes, sir.

Commissioner Prouty: And they were sent back to you in this form, were they?

Mr. Williams: Yes, sir.

Commissioner Prouty: And the tabulation which you have there is based on the admission of the Frisco Road?

Mr. Williams: The checking shown there, yes, sir.

Commissioner Prouty: Is the Frisco Railroad represented here?

(No response.)

Mr. Cowan: Mr. Wood could not get here; he is down at Washington.

Commissioner Prouty: Is the Atchison Road represented?

Mr. Andrews: I represent the Santa Fe, F. E. Andrews.

Commissioner Prouty: Mr. Andrews, do you make any question as to the movement of the cars and the correctness
25 of the statement as made by the complainant, or as verified by you with respect to those cars which you checked?

Mr. Andrews: We do not make any admission excepting that the cars moved. That is all our checking is supposed to show; it shows on its face.

Commissioner Prouty: Your check shows they moved from a certain point to a certain point, and that certain freight was paid?

Mr. Andrews: We did not make any endeavor excepting to see that the cars moved, is all.

Commissioner Prouty: And moved under the name which appears in the statement checked you?

Mr. Andrews: I don't understand that the consignor or consignee were checked up. They show on their face. The understanding I have about it from our auditors is that they made a complete check of the movement of the cars, and the weights, etc., but I do not think they ascertained who the shippers were.

Commissioner Prouty: I suppose they made no ascertainment beyond the billing, but they must have checked those against the billing.

Mr. Andrews: I don't know as to that.

26 Commissioner Prouty: Do you make any question about the right of the complainant to an order for reparation as to these cars which you admit moved?

Mr. Andrews: Why, excepting that they have not shown that

they were the shippers. That is a matter that we do not admit. We take the position also that they have not made any special proof of damage.

Commissioner Prouty: I understand that, but you admit that they paid the freight?

Mr. Andrews: No, we do not admit that.

Commissioner Prouty: You admit that somebody paid the freight?

Mr. Andrews: No, we admit that the cars moved and that so much was collected on each car.

Commissioner Prouty: Somebody must have paid you the freight?

Mr. Andrews: But we do not admit that the claimants paid the freight.

Mr. Cowan: If Your Honor please, I do not believe in that qualified admission. There comes in here one time one man who represents the Santa Fe, and there comes in next time another man who represents the Santa Fe.

27 Commissioner Prouty: I think we will find on the strength of these statements here that the freight was paid to the commission man and by him charged over against the owner, whose name appears on these cars that have been checked.

Mr. Cowan: In all cases we furnished the name of the owner who paid the freight.

Commissioner Prouty: Yes, I understand that.

Mr. Cowan: They know that. It is a mere quibble to talk about not knowing who paid the freight. The man who owned the cattle paid the freight.

Now, Mr. Williams, will you please get one of the original—

Commissioner Prouty: Just wait a minute, Mr. Cowan; do you make any question on the part of the Santa Fe in case the Commission finds these cars were shipped by the persons who make the claim, who appeared on the way bills as the owners, and the freight was paid by that person—do you make any objection to the issuing of an order of reparation at this time with respect to those claims?

Mr. Andrews: We do on the ground that they have not shown damage.

Commissioner Prouty: Yes, I understand that that ground is always raised. They have shown damage to this extent, that they paid a higher rate than the Commission found reasonable.

28 It is a legal question as to whether that is damage.

Mr. Andrews: Yes, but we do not admit that these claimants are entitled to or paid the freight.

Commissioner Prouty: I am asking you in case the Commis-

sion finds that fact, do you make any objection to an order for reparation?

Mr. Andrews: Excepting that we do not admit that they have suffered damage.

Commissioner Prouty: To make my question more specific; here are 173 cars claimed by Mrs. Adair. You admit the movement of 135. Do you object to the issuing of an order with respect to those 135 cars before the question as to the remaining cars is determined?

Mr. Andrews: We object to it on the ground that the claimants have not shown that they were damaged.

Commissioner Prouty: Oh, well; as Mr. Cowan says, this Santa Fe Railroad should send in some one here that knows something about this case. That is not the question I am asking you. Suppose we find that they are damaged as to 135 cars. Have you any objection to an order issuing as to those 135 cars before the question has been considered as to the remaining cars? They make claim as to 173 cars.

29 Mr. Andrews: Of course we will not object to an order on that basis.

Commissioner Prouty: That is, you have no objection to the order being split in two pieces?

Mr. Andrews: No, sir.

Commissioner Prouty: You say there is no representative of the Frisco here now?

Mr. Cowan: Mr. Wood told me he could not be here.

Commissioner Prouty: We will pass on to some other company.

Mr. Williams: The Rock Island Railroad instead of furnishing it, they sent a list saying that these claims had not been located. By that I naturally presumed that the others were correct, or some reference would have been made to them. Here is a letter from Mr. Dickinson saying, "In response to your letter I am sending herewith"—

Commissioner Prouty: Just a moment; Mr. Dickinson, do you understand that all those cars in the list sent you, excepting those specified, were found and found to be correct?

Mr. Dickinson: In most of the cases, yes, sir; and substantially correct. They did not check in all the details.

Commissioner Prouty: You were satisfied they

30 were the cars?

Mr. Dickinson: Our auditor was satisfied that they must be the same cars as submitted in the list by the complainant. Now, as to those which we could not locate, I had the auditor compile a list, and I furnished the gentlemen here with that list.

Commissioner Prouty: Then it would be correct if we took the entire list served on you and subtracted from it the list fur-

nished Mr. Williams, and treated the balance as located and as correct?

Mr. Dickinson: I so understand it, Mr. Commissioner, with the exception that our records, and of course we are limited to those, do not in all cases check precisely with the statement submitted by the complainant. For example, the list submitted to us may indicate consignee L. or X. That I understand is the designation for some commission house at point of destination. While the list may show L. perhaps our records show some other letter. But, nevertheless, we thought that must be the same car referred to in the statement.

Commissioner Prouty: Now, have you any objection to the issuing of an order against your company for the cars which have been checked, leaving in abeyance those cars which have not been checked, and concerning which perhaps proof can be
31 made and perhaps can not?

Mr. Dickinson: The question is as to the separation of the order?

Commissioner Prouty: Yes.

Mr. Dickinson: Well, if an order is to be issued, I do not know as that is material, whether it is made in two parts or one part.

Commissioner Prouty: You may proceed now to some other company, Mr. Williams.

Mr. Williams: I have here the St. L. I. M. & S., and the Missouri Pacific. They do not give the car numbers or way bill references, but on each claim they give the total weight and freight charges collected, and also in that way it is easy to determine just what the overcharge is.

Commissioner Prouty: Is the Missouri Pacific represented?

Mr. Wright: Yes.

Commissioner Prouty: Mr. Wright, do you understand that Mr. Williams' statement is correct and that your company has located these cars?

Mr. Wright: I think it is substantially correct. As I recall it on the first lot furnished we found all but six cars. That is, we found them in this way; certain cars had moved
32 from the points of origin to the points of destination shown, and our auditor believed that those were the cars set out in this claim, although he was not positive in every case.

As to the second lot, I do not recall just how that did come out, but the third lot I have here with me, which has not been returned to Mr. Williams yet. It covers four cars. There is a mistake in this. The amount is a small one, $26.40, but it is $8.40 more than is charged on the cars. Mr. Williams can see that. He has the wrong weight for tare charged on the shipment.

Mr. Cowan: May that be filed?

Mr. Wright: Here is an explanation of it, showing just what the trouble was.

Mr. Cowan: That can be filed with the statement.

Commissioner Prouty: Mr. Wright, Mr. Cowan moves that the Commission enter an order with respect to the claims verified by your company. Supposing the Commission finds that it should enter an order, do you have any objection to their entering the order piecemeal, so to speak?

Mr. Wright: I cannot see any material objection to that, Mr. Commissioner.

33 Commissioner Prouty: We may desire to proceed with the balance and may not; I do not know. What is the next company, Mr. Williams?

Mr. Williams: The Katy.

Mr. Cowan: The M. K. & T. Railroad have a name Katy, which has been barred for certain reasons.

Mr. Williams: Take the Katy, for instance; they have opposite the name of the consignee a red check mark there. I take it for granted naturally that that means that that claim has been checked.

Commissioner Prouty: Here is an O. K.; whose is that?

Mr. Williams: That is their O. K. It is not mine. Then on the statements on which they were not able to locate certain shipments, these certain shipments, they made an explanation such as "Am unable to locate billing for 74 cars covered by sheets 3, 4, 5, 6, 7," and that statement is signed by J. E. Myers. I suppose he is their auditor, or some authorized man at any rate. On the claims that show no such comment as that, we naturally conclude that they have been checked and have been found to be correct.

Commissioner Prouty: Was any list furnished to you by the Katy as to the number of cars checked and found to be correct?

34 Mr. Williams: I don't remember as to that. I have applied to Mr. Burg—in some instances I was unable to identify the particular cars that they had not checked, and I applied to Mr. Burg then for further information and he furnished me such references as enabled me to check the most of those. One or two of them were still in doubt in my mind and where there was any doubt I left it in their favor.

Commissioner Prouty: The Katy is represented here today?

Mr. Burg: Yes, sir.

Commissioner Prouty: Do you understand that Mr. Williams' statement is correct, Mr. Burg?

Mr. Burg: Substantially correct, Mr. Commissioner. Of course we only checked those statements with reference to the movement of the cars: we did not check the freight rates.

Commissioner Prouty: You say you did not check the freight rates?

Mr. Burg: No, we did not check the freight rates.

Commissioner Prouty: Did you check the amount paid?

Mr. Burg: I think not. Our checking only went to the extent of checking the movement.

Commissioner Prouty: Did you check the name of the consignor and the consignee on the way bill?

35 Mr. Burg: Yes, sir; and I think that in almost every instance they tallied. Of course, the billing shows the names.

Commissioner Prouty: I understand, Mr. Williams, that you have applied in all cases the published rate as published by the Interstate Commerce Commission?

Mr. Williams: Yes, sir.

Commissioner Prouty: The presumption would be, I suppose, Mr. Burg, that your company collected the published rate, whatever it was?

Mr. Burg: Naturally.

Commissioner Prouty: You make no question that you collected anything other than the published rate in any case?

Mr. Burg: No, sir.

Mr. Williams: It is possible there might be some mistake in the rates or figures.

Commissioner Prouty: It frequently happens, as we find when we undertake to figure out reparation on a particular way bill, that some error has been made in applying the rate, and that error is always adjusted; but in this case you have made no attempt to figure out and determine the exact amount of money which was paid to your company?

Mr. Burg: No, sir.

36 Commissioner Prouty: And consequently we must assume you did make the correct multiplication and did collect the correct rate?

Mr. Burg: Yes.

Commissioner Prouty: Now, Mr. Burg, have you any objection to the issuing of an order as to the claims for the cars which have been found by you to have been actually moved, provided the Commission finds such other facts as it thinks warrants the issuing of an order?

Mr. Burg: Mr. Commissioner, I see no substantial objection to that. The only thought I have in mind is this, perhaps the Commission's order would go into litigation and by issuing the order in piecemeal it might increase our expenses of litigation. But, I do not see that it would make any substantial objection to it.

Commissioner Prouty: It would rather seem to me that if these orders went into litigation, that some one case would be selected, and that case put through, because they are all analogous, and it would hardly be worth while to go to the expense, which

might be considerable, of proving up the balance of these claims until we knew whether the complainant was entitled to anything.

Mr. Burg: I do not wish to make any special ob-
37 jection.

Commissioner Prouty: You may proceed, Mr. Williams.

Mr. Williams: The next I have is the Chicago & Alton. In returning their checking they furnished their car numbers, way bill references, initials, and so forth, the same as the Santa Fe did, but accompanying this I have a letter saying that they do not admit anything, like it has been repeated here this morning several times; but at the same time they furnish such information as would enable almost anyone to say that those were the shipments.

Commissioner Prouty: Let me see the letter. You say you have a letter from them in this connection?

Mr. Williams: Yes, sir.

Commissioner Prouty: Just let me see the letter. The statement furnished you by the Chicago & Alton shows the date of the shipment, the way bill number, the car number, the destination, the weight, the rate, and the freight paid. Now, does it show the shipper and the consignee?

Mr. Williams: The consignor was J. E. Corn, Benbrook, Texas, consigned to Chicago, and it shows the consignee.

Commissioner Prouty: So they also show the shipper and the consignee at Chicago?

Mr. Williams: Yes, sir.

38 Commissioner Prouty: Is the Chicago & Alton represented?

(No response.)

Commissioner Prouty: You say you have a letter from the Chicago & Alton?

Mr. Williams: I have a letter from the Chicago & Alton. It is in the trunk there.

Commissioner Prouty: I wish you would find that letter.

Mr. Williams: Find it now?

Commissioner Prouty: If you can conveniently, find it now. If it will take too long, Mr. Williams, you need not do that. It might suggest some fact which ought to be shown at this time, is why I ask you to find it.

(Document handed to the Commissioner.)

The Chicago & Alton is not represented this morning?

(No response.)

Commissioner Prouty: Proceed to another company, Mr. Williams.

Mr. Williams: The next was the Chicago & Eastern Illinois. I do not seem to find their explanation here, but if I am not mistaken, they admitted their checking at the second hearing. I think they have a representative here who will tell you about that.

39 Commissioner Prouty: That is the Chicago & Eastern Illinois?

Mr. Williams: The Chicago & Eastern Illinois, yes, sir.

Commissioner Prouty: Is the Chicago & Eastern Illinois represented here?

(No response.)

Commissioner Prouty: Have you passed a statement to them and received it back from them?

Mr. Williams: I will take that back; here it is: Their checking is shown there, furnishing the same information as shown by the other road, way bill references, car numbers and so forth.

Commissioner Prouty: So this shows the consignor, the consignee, the originating road, points of origin and destination, the date of the delivery, the numbers of the cars and the rate paid?

Mr. Williams: Yes, sir. They have made one change there, Tuttle, Oklahoma, was the shipping point and they have changed it to Tuttle, Texas. There is no Tuttle, Texas, on their railroad and my statement was correct.

Commissioner Prouty: You received back from the Chicago & Eastern Illinois the papers which you present, containing these figures and the checking shown here?

40 Mr. Williams: Yes, sir. The next one is the Illinois Central. I believe it was the Illinois Central that was admitted instead of the Chicago & Eastern Illinois. They have a representative here.

Commissioner Prouty: Mr. Humburg?

Mr. Humburg: This matter, if your Honor please, has been handled by Judge Fletcher, who is out of the city today. But in going through the files I find a letter addressed to Mr. Williams under date of January 23, 1913, saying the shipments have been checked and found to be substantially correct. That there are some minor irregularities in the names of consignors, but these are apparently only such errors as arise from frequent transcriptions of way bills.

Commissioner Prouty: You are of the opinion then that the checking is sufficient to identify these cars as having moved?

Mr. Humburg: Our position upon that matter, if your Honor please, is that the statement we have submitted to Mr. Williams will speak for itself. Beyond that we do not know what the situation is. That is to say, we do not know of our own knowledge who finally bore the charges; and we urge in substance the motion to dismiss filed with the Commission on the ground
41 shown in that motion.

Commissioner Prouty: That, as I remember it, was because the claimants show no damage to them?

Mr. Humburg: Yes, and the several other grounds urged in that motion.

Commissioner Prouty: Is there a copy of that motion here? Mr. Cowan, have you a copy of that motion?

Mr. Cowan: I have never received a copy of that motion.

Commissioner Prouty: Have you a copy of the motion, Mr. Humburg?

Mr. Cowan: I think there was a verbal motion made in the record. I really did not pay any attention to it because I thought it was merely a formal motion.

Commissioner Prouty: It occurs to me I have never seen that motion.

Mr. Humburg: I find it in the files, your Honor, and I assume, of course, that it was filed.

Commissioner Prouty: I have no doubt it was, Mr. Humburg.

Mr. Humburg: If I may be permitted to look at the docket.

Commissioner Prouty: I do not think this is the docket that would contain that anyway. They have apparently got the wrong docket here. It would require about a carload to get all
42 the dockets here. I instructed them to send but one docket.

(Document handed to the Commissioner.)

You may proceed now, Mr. Williams.

Mr. Cowan: I have no objection to the motion, but I never heard of it.

Commissioner Prouty: You may proceed now, Mr. Williams.

Mr. Williams: The next one is the Texas & Pacific Railway Company moving cars to New Orleans. There was only one claim against them that we have prepared and filed. It covered 64 cars and they furnished me with copies of live stock way bills covering shipments which they supposed to be covered by that claim, but I have not checked all of them they furnished me, because some of them are not right. I have checked those which I found to be correct, and covered those only in the claim.

Commissioner Prouty: Is the Texas & Pacific represented here?

(No response.)

Commissioner Prouty: Is there some other railroad, Mr. Williams?

Mr. Williams: That seems to be all of them that are covered by this summary of the claims that have been checked. The Wabash, the second filing of the Frisco, the M. L. & T., and Kansas City Southern have not reported; or rather the M. L. &
43 T. has but owing to the fact that it was not originally made a party to the suit, we have not entered these in the claims that have been checked.

Commissioner Prouty: What is the M. L. & T.?

Mr. Williams: Morgan's Louisiana & Texas line.

Mr. Cowan: That railroad was not made formally a party

to the proceeding. The Southern Pacific and Sunset Central lines were all made parties, but for some reason or other, I don't know how it happens, that line was not made a party. We confess that.

Commissioner Prouty: How many shipments were delivered by that line?

Mr. Cowan: Mr. Williams probably knows. They were New Orleans shipments.

Mr. Williams: Quite a number of shipments made over that line. New Orleans is really a small market, but the fact that the M. L. & T. is the delivering line at that market made it in this case the party against whom we were making the claims; but with the exception of the T. & P. which delivered only a few cars there, all of them were delivered over the M. L. & T., according to my understanding.

Commissioner Prouty: If the M. L. & T. was not a
44 party you could hardly make claim against that line now.

Mr. Williams: No, that is the reason we did not include those here.

Commissioner Prouty: You would be obliged to make your claim against the originating road?

Mr. Williams: Against the originating road, yes, sir.

Commissioner Prouty: Do you ask at the present time any order with respect to these shipments delivered by the M. L. & T., Mr. Cowan?

Mr. Cowan: No, I do not, because we have not tabulated and have not in the present form to present the claims as against the originating line. The G. H. & S. A.,—the G. H. & S. A. and the Houston & Texas Central and the T. & N. O., possibly some of their connecting lines also, like the San Antonio & Aransas Pass—well, I am sure the Aransas Pass and possibly some on the I. & G. N., the originating lines, delivered their freight passing through Houston altogether, and from there on to New Orleans. There are no cattle east of the Sabine River involved in this controversy, because the rates are only Texas rates. I have stated and admitted to Mr. Scandrett that we did not claim we had a right to have an order against the M. L. & T. because they are not a party
45 to the original suit, but that we did have a right to an order against the originating line. Of course, in this case we are making out claims against the line to whom the freight was paid. If I mistake not, the statutory law and common law and the decisions of the Commission, the obligation is a joint and several one and we can make a claim against the originating line, and it is my purpose—the data will show how many cars were shipped off of the various lines, that is originating lines—in connection with the further testimony to identify the cars not heretofore identified. It is a comparatively simple matter because there is a very small market in New Orleans, only a few commission houses to

handle it, and they have complete records to show where everything originated, and it would not take only a day to prove that.

Commissioner Prouty: But you ask no order with respect to those shipments today?

Mr. Cowan: No.

Commissioner Prouty: Is there any other line, Mr. Williams?

Mr. Williams: That seems to be all the lines covered by this summary.

Commissioner Prouty: Now, Mr. Cowan, it is a long time since I have practiced law, but my recollection is that there is a
46 legal maxim that every claim which can be embraced in a judgment, is presumably embraced, so that a judgment upon an account covering a certain period is a bar to every claim during that period, whether the item was actually embraced or not. I do not see any reason for objection, in fact, it seems to me there is every reason for the Court's position, and I do not see any objection to the issuing of an order with respect to these claims as to which the movement is admitted, an opportunity to try the matter out in court, and if it is decided you can recover, you can then proceed to make proof as to the balance, which may be a matter of some difficulty and it would not be worth while to take up your time and the time of the defendants to make that proof unless some good would come from it. At the same time you must assume the responsibility, if you ask the Commission to make that kind of an order.

Mr. Cowan: I am willing to assume that responsibility. I do not know as to the legal maxim, I am not an authority on maxims, that a person should embrace all the claims he has on a particular subject matter, but here the subject matter is diffused.

Commissioner Prouty: Nobody objects to your hav-
47 ing the order if you want to take it.

Mr. Cowan: I want to take an order for the claims that have been admitted. I want to take a chance.

Commissioner Prouty: You understand there has not been anything admitted; that is to say, these railroads have not admitted you are entitled to any money. They have admitted the movement of certain cars, and they earnestly insist you are not entitled to recover; but I think the Commission would find on the facts admitted that you have paid the freight and are entitled to reparation. We hold that the payment of an unreasonable charge imports damage, that of itself shows damage. Now, the railroads claim to the contrary, and are going to try that question.

Mr. Cowan: I think we have gone further than that, and I say that for the purpose of the record and not for the purpose of Your Honor's information. We have shown throughout this case that in all cases, no matter where the live stock originates the amount of freight is taken out of the proceeds of the sale of the

live stock, and I think the question is even beyond the cattle (cavil).

Commissioner Prouty: I think we should find in this case that your people have realized so much less money from the
48 sale of their cattle than they otherwise would have realized That, of course necessarily follows.

Mr. Cowan: I think we ought to have the order. Now, as to those claims—and when I say admitted I do not mean they admit we are legally entitled to recover, I mean they admit the facts which I say constitute a basis for recovery. Now, that question as to whether it is a fact which constitutes a basis for recovery is a legal one which I do not think anyone would bring before the Commission, but it should go before the court. These shipments were all made prior to November, 1908, when the order took effect reducing the rates on which claims were made, the rate having been advanced in March, 1903, for the most part, certainly all for Texas. A few were made at other dates on lines not embraced in the Southwestern Tariff, but they were passed on by the Commission; the case was taken to the court and the court refused to enjoin the order of the Commission. So, I think the fact of the unreasonableness of the rate is now res adjudicata, it is settled.

We are entitled to interest on each of these claims from the date of the shipment; the tabulation which Mr. Williams has shows the date. It is a mere matter of mathematical calculation to show what the interest ought to be on each one of the claims.
49 That I will have to have computed and filed for convenience. What I want to do is to get an order of the Commission allowing the claims which are covered by the shipments which have been admitted; I won't say the claims which have been admitted but the shipments which have been admitted, and the computation of the interest will be very promptly made and filed with the Commission.

Now, the other shipments not having been admitted were just as certainly made, barring, of course, mere clerical mistakes, just as certainly as were those they have been able to check.

Commissioner Prouty: Do you ask us, in the making of this order, to endeavor to identify the cars with respect to which the order is made? Take the 173 cars for which Mrs. Adair filed claim; the movement of 135 of those cars is admitted. Do you ask us to identify the 135 cars which are admitted on the claim which you filed?

Mr. Cowan: Not at all. That is a mere quibble. If I ship a car it does not matter to me what the number of that car is, but whether I paid the freight.

Commissioner Prouty: But I am thinking about your subsequent claims.

Mr. Cowan: I don't think so. I think what the
50 Commission ought to find is the case you have just suggested.

Commissioner Prouty: That is that you shipped 135 cars?

Mr. Cowan: That we shipped 135 cars to Kansas City and the overcharge was so much.

Commissioner Prouty: If you desire we should probably find that you made claim for 173 cars.

Mr. Cowan: Yes, and 135 have been admitted as shipped.

Commissioner Prouty: And that the carriers upon examination of their records can identify the movement of 135 of those cars, and admit the movement of 135 of those cars?

Mr Cowan: I am really not particular that that be put in the finding. I think the fact that we shipped so many cars—

Commissioner Prouty: All right.

Mr. Cowan (Continuing): Without a finding as to how many they claim have been shipped in addition.

Commissioner Prouty: It is only a case of whether you get into deep water when you come to the question of reparation.

Mr. Cowan: I don't feel that way. These carriers collect the money and we are prepared to prove and can prove it by taking the testimony. We can do it by depositions, if necessary.

51 Commissioner Prouty: I simply wanted to call your attention now to what you would like to have the Commission find. I understand you to say that you simply ask to find, using Mrs. Adair's claim as an illustration, that she shipped 135 cars and the freight was paid, and so forth, and the other necessary facts.

Mr. Cowan: Those are the necessary facts which it would be necessary to find; that would be done in a court.

Commissioner Prouty: Before we make a finding we will draw up a statement of what it is proposed to find, and make service on the parties, so they can see just what we propose to find. This is a matter of some importance.

Mr. Cowan: I was going to suggest, Mr. Commissioner, as to the matter of stating here just what I would like to have found, that I do not want to be bound by that; I would like to have the privilege of submitting to the Commission and the counsel for the railroads what I would like to have found after I have given it a little more study.

Commissioner Prouty: I might say that if Mr. Williams can attend to this, I will ask our examiner to sit down with him immediately, just as soon as he comes to Washington, and go through these checks of the railroads and see what are admitted, so we can

52 make up a statement based on that admission. If within the next few days you can file with the Commission and serve on the defendants a statement of what you ask to have found, that might be of service to us in rendering our findings, leaving out the exact figures; a statement of facts.

Mr. Cowan: I think, Your Honor, we have anticipated that by the very complete statement Mr. Williams has made alphabetical-

ly of the claim of every person against each railroad, which we would be glad to furnish, of course, to each railroad, I guess you have copies, Mr. Williams. He can furnish copies, and it shows a tabulated and convenient statement.

Commissioner Prouty: There is one thing more; these shipments were made and the freight paid by a great many different persons. My understanding is that there has been some sort of an assignment of these claims to the secretary of the Cattle Raisers Association or to the Cattle Raisers Association. Now, do you ask the Commission to make the order in favor of the original shipper, or do you ask the Commission to make it in favor of the assignees, and if so, what evidence do you offer of the fact of the assignment?

Mr. Cowan: Assignments have been made as a mere matter of I should say, supererogation, you might call it, or over-abundance of caution, by a very large number of the shippers.

53 Commissioner Prouty: You might more properly style it a super-complication.

Mr. Cowan: My position is this, as I have shown by Mr. Williams this morning, and if it is not sufficiently shown we can have him testify further on the subject, or any commission man in Chicago will testify to the fact, and all the railroads know it, that by the universal custom the commission man pays the freight, which is done, I will say, in all cases. There might be a case in a thousand where it is not done. He is also the agent to collect back overcharges.

Commissioner Prouty: Suppose we assume that the Commission man did pay the freight and did charge it to the owners. That results in the owner ultimately paying the freight. The owner got so much less for his stuff than if the freight had been lower. That constitutes a claim from the owner?

Mr. Cowan: It constitutes a claim from the owner, but by the universal custom of the defendants the commission company is the agent of the owner to pay the freight, and to collect back overcharges.

Commissioner Prouty: We have declined in several cases to issue an order in favor of a commission man.

Mr. Cowan: I do not know as you have ever de-

54 clined it where the proof was made to you that he was the agent to pay back these overcharges. I doubt if that could be declined.

Commissioner Prouty: Mr. Cowan, if I appoint a man to collect a claim for me as my agent, could he do it in his name or must he do it in my name? If you are a lawyer and prosecute a suit for me you prosecute it in my name, do you not?

Mr. Cowan: That depends on the code of practice. The codes of a good many states provide that a suit must be brought in the name of the party in interest; at the same time if he brings a suit

to recover and does recover, that is a bar to the claim on the part of the owner.

I have no objection to the order of the Commission reciting the payment of claim to the secretary and general manager of the Cattle Raisers Association, which has prosecuted this suit all the way through, which would be a bar, and is bound to be a bar, because the statute of limitations would make it a bar.

Commissioner Prouty: The statute of limitations might make it a bar, but no order of this Commission could make it a bar.

Mr. Cowan: I am not certain about that. This Commission has done a good many things. They barred me out of all the claims back of August, 1906.

55 Commissioner Prouty: That is failure to do something, not doing something.

Mr. Cowan: We have the assignments of a large number of these claims, which assignments we will submit to the Commission. Mr. Williams' list contains an index figure or letter opposite those claims which have been assigned to Mr. Crowley when he was the secretary of the Association, marked "C," and opposite the claims which were assigned to Mr. Spiller, who is the secretary and general manager now, you have the letter "S." Those claims not covered by assignments, however, and that have been practically considered by myself or my partner—he is a good lawyer—we think that the commission companies demand on us that we file a claim for all their customers, whether they were members or not, was a sufficient authority for Mr. Crowley to proceed and Mr. Spiller to proceed as he has in filing claims where there is no formal assignment; and while it may be the order ought to be made in the name of the owner of the claim, we think the agency is sufficiently proven to entitle us to collect the claim.

Commissioner Prouty: If you want the order made in the name of anybody except the owner, you may make up your mind who, and for what reason: if you desire us to find that

56 these claims have been assigned to some person and are owned by that person and prosecuted by him for his own benefit and not for the benefit of the original owner, it will be necessary to introduce some proof along that line.

Mr. Cowan: We have the assignments.

Commissioner Prouty: I do not think the mere filing of an assignment, unless the other side consented to it, without an opportunity to examine it, would be sufficient. It would be an item of proof, however.

Mr. Cowan: Perhaps I had better make that proof with Mr. Williams now in order to have it in the record. So if your Honor will permit, I will stop at this point and do that.

Commissioner Prouty: You may do so.

Mr. Cowan: I will ask you, Mr. Williams, to state whether you have stated in the list you have made up, as has been men-

tioned by me, an indexed letter which shows the fact of the assignment of these claims?

Mr. Williams: I have, yes, sir.

Mr. Cowan: Have you set opposite each claim that has been assigned to Mr. H. E. Crowley, when he was secretary and general manager of the Association, the letter "C"?

Mr. Williams: I have.

57 Mr. Cowan: Have you set opposite each claim that has been assigned to Mr. E. B. Spiller, secretary and general manager, letter "S"?

Mr. Williams: Yes, sir.

Mr. Cowan: Do you know, as a matter of fact, that written assignments have been made and filed with the Cattle Raisers Association, and are in your office showing these assignments?

Mr. Williams: Yes, sir.

Mr. Cowan: Is it not a fact that Mr. Crowley, when he retired or since he retired as secretary of the Association, assigned over to Mr. Spiller all the claims which had been assigned to Mr. Crowley?

Mr. Williams: Yes, sir.

Mr. Cowan: That is a written assignment?

Mr. Williams: Yes, sir.

Mr. Cowan: These assignments were taken for nominal considerations, and because the Cattle Raisers Association was prosecuting these cases and the secretary and general manager being one office, had charge of the whole matter?

Mr. Williams: Yes, sir.

Mr. Cowan: Is it not a fact also that in different meetings of the Cattle Raisers Association from year to year, at

58 their annual meeting and convention, that the report of the executive committee of the Association contained the reports of the attorney and secretaries and has shown the fact that these claims were prosecuted for the benefit of the owners of these claims?

Mr. Williams: Yes, sir.

Mr. Cowan: And that has been printed and widely circulated?

Mr. Williams: Yes, sir.

Mr. Cowan: And sent to every member of the Association?

Mr. Williams: Yes, sir.

Mr. Cowan: Is it not a fact that the Commission companies demanded on the part of the secretary and general manager of the Association, that all claims of all their customers should be filed and prosecuted, as a condition to furnishing even the claims for the members of the Association?

Mr. Williams: Yes, sir.

Mr. Cowan: All the claims which have been furnished by

the Commission companies are the claims originally filed and now with the Interstate Commerce Commission?

Mr. Williams: The tabulation of them with the Interstate Commerce Commission are shown there (indicating).

Mr. Cowan: Is it not a fact that the claims furnished by the commission companies made out on the
59 blanks furnished by the Cattle Raisers Association to the commission companies, were sent to Washington and indexed and are there on file?

Mr. Williams: Copies of the tabulations are on file, yes, sir.

Mr. Cowan: I have before me a claim made by Frank Witherspoon. I would like you to state in the first place whether copies of that claim were filed with the Interstate Commerce Commission?

Mr. Williams: A tabulation of all the shipments shown hereon, with the exception of those from points where there was no increase in the rate, and possibly some of those went through by mistake originally and were filed with the Commission, and the tabulation shown in your docket there and given exhibit numbers.

Mr. Cowan: Just state what the original information is that is made up in that form?

Mr. Williams: The original information? Here is the name of the Commission company, the name of the owner or person who sold the cattle, and the place from which shipped, the place shipped to, date of shipment, number of cars, road over which shipped, the amount and rate of freight, and to whom
60 consigned.

Mr. Cowan: I will state, if your Honor please, for your Honor's information, so it may be here in the record, as the record is very large, that within a year of the taking effect of the Act to Regulate Commerce as amended in 1906, we filed a claim preceding the date of filing, which to my recollection ran up to about the 1st of June, 1907. Subsequently those claims were filed with the Commission from time to time, including all of the data which Mr. Williams has mentioned, using the same blanks which the Commission companies had used, and we copied them into those claims and they are set down in detail. There is an awful big lot of stuff, weighing five or six hundred pounds. It was indexed and tabulated and intervening petitions were filed on behalf of each member of the Association and each claimant whose name appeared on the statement, and they are with the Commission, stored away there somewhere. They might be difficult to find but they are there. Mr. John B. Daisch and C. A. Hamilton did a lot of preparatory work in filing these claims. So far as I know there has been nothing left undone that would show the original data furnished by the commission companies.

Now, I want to ask Mr. Williams a question about

61 that if I have not sufficiently done so already. The claims which you have presented in the various tabulations you have made and furnished to the railroads, and have testified about, were all correct according to the information furnished to you?

Mr. Williams: According to the information furnished to me they are.

Mr. Cowan: And that information comes from the commission companies?

Mr. Williams: Yes, sir.

Commissioner Prouty: Take the claim of Mrs. Adair, was that claim assigned?

Mr. Williams: Yes, sir.

Commissioner Prouty: Have you the assignment there (document handed to the Commissioner)?

What do you say, Mr. Cowan, as to the right of the owner to ask for an order, after having made this assignment?

Mr. Cowan: I do not think the owner has the right, after having made the assignment, to ask for an order. After having made the assignment, I think the assignee has the right.

Commissioner Prouty: Do you know the signature of Mrs. Adair?

Mr. Williams: That is signed by her bookkeeper,
62 Mr. Lichertwood. I know his signature.

Mr. Cowan: These assignments have not been filed with the Commission but we will file them.

Mr. Humburg: Unless they are filed, we suggest that there might be put in the record here one of them so as to show just what the form is.

Commissioner Prouty: You might copy into the record that one of Mrs. Adair.

Mr. Cowan: Mr. Williams, will you give the stenographer a copy of the assignment?

(Said document is in the words and figures following, to-wit):

"_____1913

In consideration of One Dollar to me in hand paid by H. E. Crowley, Secretary, as well as other considerations good and valuable to me, I hereby transfer and assign to him absolutely, any and all right of action claims or demands which I now have or may hereafter have, against each and every Railway Company over whose railroad I have shipped any cattle, for reparation or reimbursements on account of any excessive, unreasonable, discriminatory or otherwise unlawful or unjust freight rates or other charges which I have paid to such railway company
63 on such shipments, as per schedule of said shipments hereto attached.

"Having assigned my said claim as aforesaid, I also delegate to said Crowley, Secretary, full authority in establishing said claim to collect data and evidence in relation thereto from all Commission Companies, persons or firms as if I were personally present and acting in the premises.

"Witness my signature hereto.

_____

_____ Sign here.

Postoffice Address."

Commissioner Prouty: You let us know right away, Mr. Cowan, whether you want the order made, if one is made, in favor of the original owner, or in favor of the assignee.

Mr. Cowan: I want it in favor of the assignee, in all cases where we have an assignment. We have considered the matter quite thoroughly and we think and I will brief that point and submit it to the Commission—that we are entitled to the order on behalf of the manager.

Commissioner Prouty: I do not care to have you brief it, you will have to assume the responsibility in making it. You have the thing all mixed up here so I would not have any
64 idea what ought to be done, so you make up your mind what form you think the order ought to take, and we will put the order in that form.

Mr. Cowan: If your Honor was going to stay on the Commission I might not remark that I do not think you ought to say we have the thing all mixed up; I think it is rather pertinent.

Commissioner Prouty: I hope it is as plain to my successor as it is to you.

Mr. Cowan: I will submit and be very glad to furnish counsel on the other side my conclusions on that subject. As I said, my partner is a very good lawyer and when we can get together, which will be very shortly, I will get him to make up an opinion on this point.

Commissioner Prouty: Now, of course, there is no proof here that these assignments have been executed by the persons who purport to execute them, but I take it, gentlemen of the defense, it would not be your desire to put Mr. Cowan to the necessity of making proof in each individual case. There is no doubt about it, I suppose, and we will find, unless there is some objection, that this assignment, was regularly made by the person purporting to execute it.

Mr. Cowan: I will just ask Mr. Williams now, if it
65 is not a fact that the Cattle Raisers Association through its secretary and general manager, sent these assignments through the mails to the parties who were the owners of the claims shown in the list submitted, and requested them to sign the assignment and send it back to the Cattle Raisers Association?

Mr. Williams: By the person in authority to do so, yes, sir.

Mr. Cowan: Take the case of Mrs. Adair, she lives in England?

Mr. Williams: Yes.

Mr. Cowan: And the man who manages her ranch, manages her entire affairs and is recognized as her agent for everything?

Mr. Williams: Yes, sir.

Mr. Cowan: When cattle are shipped for Mrs. Adair—

Commissioner Prouty: I don't think you need to go into that; unless there is some objection we will find the fact of the assignment according to the language of the assignment itself in all these cases in which an assignment has been made, and you indicate in whose favor the order should be made in all cases.

Now, is there anything more to be said about this case, gentlemen, today?

66 Mr. Dickinson: I would like to suggest that it may be true as far as my knowledge goes, that there is a universal custom of the commission houses to deduct freight charges from the invoice and remit the balance to the consignor, but I do not feel at liberty to admit the sufficiency or the competency of the proof that has so far been offered to sustain that proposition in this case.

Mr. Cowan: How should I be able to prove it if it is a fact? Do you want somebody from a commission house that is thoroughly familiar with it?

Mr. Dickinson: Of course, I am not making the proof. I do not think it would be right for me to sit here silently and by my silence admit that you have proved that fact, so far as you have proceeded in this case.

Mr. Cowan: If there is a question about that, I see Mr. Clifford Thorne, who is the chairman of the Iowa Commission, here, and who I think is thoroughly familiar with live stock transactions in this country:

Commissioner Prouty: I do not believe, Mr. Cowan, that would be altogether competent proof. I rather think you have shown it already; but the testimony of one man in one section of the country that a certain thing was done in Iowa would

67 hardly show that it was done in Texas.

Mr. Cowan: No, but I think Mr. Thorne is familiar with Chicago, St. Louis, Kansas City, St. Joseph and these other points.

Commissioner Prouty: My impression is that it appears the owner made a shipment of live stock to a commission merchant and the freight was paid and the cattle sold by the commission merchant. Did not one of these commission merchants appear here?

Mr. Williams: We brought one here, but they would not let him go on the stand.

Commissioner Prouty: We will look over the record in that

respect, but my impression is the Commission will find from the present record that the owner paid the freight. He sent the cattle to market, sent them to a commission man, and in the ordinary course of business he paid the freight.

Mr. Dickinson: That may be the usual custom, Your Honor, I am not disputing it, but—

Commissioner Prouty: You need not introduce any testimony on that, Mr. Cowan.

Mr. Dickinson: I merely desire to have the record show in this case an objection to the sufficiency and competency of
68 the testimony offered.

Mr. Cowan: Do you mean the competency of the testimony to show that the commission company is the agent of the shipper for the sale of the cattle and the paying of the freight and collecting the overcharges?

Commissioner Prouty: I understand the Commission must find that the owner of the cattle himself paid the freight either himself or through some agent; and Mr. Dickinson objects that there is not sufficient proof as to that.

Mr. Cowan: I do not understand Mr. Dickinson that way. I understood Mr. Dickinson to mean that there is no sufficient evidence to prove that the commission man is the agent to collect and pay back overcharges.

Mr. Dickinson: No, the Commissioner has my view.

Commissioner Prouty: What bearing has it in this case whether the Commission man is the agent to collect and pay back overcharges?

Mr. Cowan: The only bearing that has is when we come to make proof as to the balance of this case—

Commissioner Prouty: Oh, we will talk about that when we get to it. It is not of importance here because these shipments are admitted.

69 Mr. Cowan: I suggest, however, that it will become important and I wish to emphasize the idea that not every man who is embraced in these claims is the same shipper who shipped under claims that have not been admitted. Many shippers are not embraced in these claims at all, but they paid the freight just the same and the railroads have not admitted that they can trace the shipments, and that I want to prove in justice to them.

Commissioner Prouty: You desire us, of course, to find that Mrs. Adair shipped 135 cars, paid the freight and made the assignment?

Mr. Cowan: Yes.

Commissioner Prouty: And that some other person shipped a certain number of cars, paid the freight and made the assignment? In other words, you want a finding as to the transaction of each individual, showing the assignment by that individual to Mr. Crowley or Mr. Spiller?

Mr. Cowan: Yes, but I do not want to bar these people who are just as much entitled to collect as the people who are here in these admitted claims. For that reason we want to make the proof in the balance of the case.

Mr. Humburg: May I ask Mr. Williams a question, Your Honor?

Commissioner Prouty: Yes.

70 Mr. Humburg: Mr. Williams, those assignments are of three different kinds, as I understand; first an assignment from the proposed consignor to the general manager and secretary of your association, is that true?

Commissioner Prouty: They are to some individual.

Mr. Williams: There are two individuals there, the general manager and the secretary, but the assignment form is the same.

Mr. Humburg: It is the same from the supposed consignor to the secretary of the association?

Mr. Williams: Yes.

Mr. Humburg: The same in form?

Mr. Williams: Yes.

Mr. Humburg: Now, that secretary, I understood you to say, made a subsequent assignment to another secretary, is that true?

Mr. Williams: The first one did, yes, sir.

Mr. Humburg: Can you furnish for the record a copy of that second assignment?

Mr. Williams: I have the original here.

Mr. Cowan: We will furnish that.

Mr. Humburg: Is the form the same—well, it will

71 be furnished. Now, as to the dates of those several assignments, when were the claims originally assigned?

Mr. Williams: Well, these forms are dated all along. Some of them bear only recent dates, some of them are dated back from the time of Mr. Crowley as general manager. There has been no need of any rush, we thought, in securing the assignments, as our authority to file them has been acknowledged by the parties interested. It was only a matter of form, these assignments, and it was recognized that they would give them to us when they were wanted.

Mr. Humburg: That is all.

Mr. Cowan: I wish to say for the purpose of the record, in closing this matter about reparation, that although the Commission refused to allow us the claims back of August, 1906, it is my contention that that is absolutely contrary to law, not only a failure to perform the legal duty of the Commission—and I do not say that by way of criticism, but a mistake of judgment—but it was contrary to the express declaration of the Act of 1906, wherein we have the right expressly given to file our claims and the Commission refused it entirely without reason, did not express any reason. A matter of the same sort is up, I think it is called the Bur-

72 gess case. We went before the Commerce Court, and the Commerce Court clearly held, however much that court has been disparaged—

Commissioner Prouty: The judgment of almost any court is no good, Mr. Cowan, unless it is carried out.

Mr. Cowan: We have not surrendered our right to demand those claims and we do not think we ought to have to do so, and by the action we take here we make no waiver of our claims.

Commissioner Prouty: You filed those earlier claims, did you not?

Mr. Cowan: Oh, yes, they were filed within the year. About $200,000 of claims, partly of these shippers and partly of others. It was just simply money taken away from us. I don't say that in criticism of the Commission, but I think the Commission was wrong, and I don't wait to waive here any claim we may have.

Commissioner Prouty: Is there anything further? If not, this case will be closed and taken under advisement.

Whereupon, at 11:30 a. m. on the 17th day of October, 1913, hearing in the above entitled matter was closed.

INTERSTATE COMMERCE COMMISSION.

Washington.

I, GEORGE B. McGINTY, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the papers hereto attached are true copies of the transcript of the stenographer's notes of the hearings held September 19, 1912, at Chicago, Illinois, before Commissioner Prouty, January 24, 1913, at Chicago, Illinois, before Commissioner Prouty, and October 17, 1913, at Chicago, Illinois, before Commissioner Prouty, in case No. 732, The Cattle Raisers Association of Texas against The Missouri, Kansas & Texas Railway Company and others, the originals of which are now on file and of the record in the office of this Commission.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and affixed the seal of the Commission, this 7th day of November, 1914.

(Seal) George B. McGinty,
Secretary of the Interstate Commerce Commission.

327 Mr. Norton: Now before passing from that, I want to make some objections to the competency and relevancy and legality of certain evidence contained in that, as received by the Interstate Commerce Commission, but before doing that I want to offer as Defendants' Exhibit No. 2, a sample sheet of the exhibits offered by Mr. Cowan before the Interstate Commerce Commission, showing the movements of cars, etc., from which I take it the Commission drew off this appendix to its decision and order, which is contained in the brief. I understand or understood from telegram from Fort Worth that Mr. Cowan would have that here for me, but the Secretary of the Cattle Raisers Association did not have it this morning. (Addressing counsel for plaintiffs) Will you have it for me by this afternoon?

Mr. Williams: Yes. I just asked for one sheet; there were a great number of large books of exhibits and we have a stipulation that I shall put one in as typical of the entire evidence of that sort on that subject, so that you will understand from the testimony and from this Exhibit 2 just what was before the Commission.

Mr. Creason: If your honor please, we do not accept the statement of counsel that that is typical of the entire evidence that was introduced on that point. We don't want that to go undisputed.

Mr. Norton: Well, my statement was this, and I understood Mr. Cowan agreed to it—they prepared a number of blank sheets and [*the*] filled them out, lettered from "A" to the end of the alphabet, and that the sheet respecting "A" was just the same as "C", "D", and "E", except as to the number of cars, point of origin, and point of destination; and that's all I am offering that for, is to show that that is a typical sheet, illustrating and disclosing the form of the exhibits offered before the Interstate Commerce Commission, and covering all the shipments that were made. This is to avoid introducing a number of papers that would almost fill a farm wagon.

Mr. Cowan: We have no objection to furnishing Mr. Norton the sheet that was introduced before Judge Proutty, but our contention is the finding of the Commission is conclusive.

The Court: Well, that's a matter of law. What we want to get at now is what evidence is to be introduced and what its force is. I understood the purpose of introducing this sheet is to show that in this particular form—the data, of course, differing as to each particular shipper—but that in this particular form the proof was made with respect to the claims of each one. Now if that is so and
328 it is typical, the question is, is that admitted to be true? What its legal effect is is another thing.

Mr. Cowan: We admit that was introduced before the Commission.

The Court: Well, the point is, if that was introduced before the Commission, was the other proof offered in the same form? I suppose it goes to the question of whether making the proof in that form was [substantive] and proper evidence, not what the detail of proof on each sheet was.

Mr. Cowan: Well, if your honor please, I don't know whether you have read the decision of the Commission in this supplemental order. They recite that all of the exhibits showing the shipments were submitted to the railroads and they checked them against

their own records, and that no award was made in any case except where the railroads had checked these claims against their own records.

The Court: Well, I say I am not passing on the question now as to what the legal effect of that would be, or what the court would rule on that, but whether that discloses the form and character of the proof.

Mr. Cowan: It discloses the list of shipments and those lists of shipments were submitted to the railroads and checked by them against their own records.

The Court: The only question is, do you concede what Mr. Norton says was the understanding with respect to this, or is it not conceded, and then the court will pass upon the efficacy of that.

Mr. Cowan: Well, I don't want to make any admission about that, except what was stated in the opinion of the Commission.

Mr. Norton: I don't ask you to make any waiver, and I want you to save your objections to the materiality of the evidence when I introduce it, but I want to present it to this court as a typical sheet of what was introduced before the Commission.

Mr. Cowan: We object to the materiality of it, because the Commission decided in its opinion that all of the claims which had been awarded were checked by the railroads themselves, and we object to it as being immaterial, irrelevant, and there is no denial that these claims were checked against their own re-
329 cords.

Mr. Norton: Well, that all appears in what I have already introduced, but I want this court to see, in addition to the verbal testimony, I want it to see a sample of the exhibits that were put in while the testimony was being offered.

Mr. Cowan: Well, we will furnish you the samples as I agreed to do, but we claim it is entirely immaterial and the Commission decided all these claims were checked by the railroads themselves.

The Court: That may all be contained in your memorandum for the court.

Mr. Norton: It may be considered that I offer this as defendants' Exhibit No. 2 at this point?

Mr. Cowan: Yes and that we object to it.

Said paper now offered in evidence, having been duly marked by the Reporter as "Defendants' Exhibit 2, GWS", is filed herewith, made a part of this record and is in words and figures as follows, to-wit:

J. A. Patterson, Claimant, Estelline, Tex.,

In Account with Atchison, Topeka & Santa Fe Ry. Co., Delivering Line.

Consignor.	Consignee.	Originating road.	Point of origin.	Destination.	Date of delivery.	Number cars.	Rate paid.	Rate ordered.	Amount overcharge.	
				(In pencil)					(In pencil)	
				So. St. Joseph, Mo.					$33.12	
J. A. Patterson.	T. T.	Ft. W. & D. C. Ry.	Estelline, Tex.	4	July 22, 1908	5	34.5c.	31.5c.	$33.00	
(IN PENCIL)	7-20-08	W. B. 97 car No.	S. W. 3585	Wt. 22,000	frt. 7590	Rptd.	July	22-08		
	" "	" 98 " "	C. & S. 11074	" 22,000	" 7590	"	"	"		
	" "	" 99 " "	" 1598	22,200	" 7659	"	"	"		
	" "	" 100 " "	D. C. 1063	22,000	" 7590	"	"	"		
	" "	" 101 " "	C. B. Q. 62375	22,200	" 7659	"	"	"		
				110,400						
				3						
				33.12%						
						5				33.00
										(33.12)

331 Mr. Norton: Now I have arranged to put a witness on the stand to go over the appendix to the Commission's decision and order, in which it sets up at large or in detail the order made against The Atchison, Topeka & Santa Fe Railway, and have the witness, who is competent to do that, point out the shipments that were made by carriers in connection with The Atchison, Topeka & Santa Fe, and show the amount of money that was divided between the Santa Fe as a collecting carrier and its initial carrier or carriers; but in conversation with Mr. Cowan last evening, he said that he was willing to admit that many of these, or most of these shipments were carried by joints carriers, and in view of that I don't know that we will go into detail. I might have the witness illustrate to the court by an example or two what I mean. I will ask to have Mr. Fox take the stand to illustrate what I mean.

Mr. Cowan: Now if the court please, the proceeding here, or before the Commission rather, went on the ground that a delivering line could collect freight, say at Kansas City and was responsible for the entire amount of the overcharge. The Commission's order is only against the delivering line, on the idea that they were joint and several transactions. We admit that a great many of the shipments as are indicated in the report of the Commission were joint line shipments, on the Santa Fe and other lines.

The Court: Well, does the report of the Commission disclose that?

Mr. Norton: No, it does not. Yes Well, the report of the Commission discloses that it makes an award.

Mr. Cowan: Only against the delivering line.

The Court: Well, I know that, but does it disclose what were totally carried by the Santa Fe and what by other lines?

Mr. Norton: No, it doesn't make that showing.

The Court: Well, I can't see how that testimony as to a specimen shipment would avail anything, except it would mean that Mr. Cowan's position was correct, or the Commission's position was correct; but this would not enable the court to pick out what shipments were properly made and charged against the Santa Fe, unless every one was analyzed.

Mr. Norton: Well, this man can run through the whole list.

332 The Court: Well, can't that be put in evidence without the court listening in detail to this evidence, which even wouldn't go into one ear.

Mr. Morrow: Suppose we do this, your honor. Put the witness on and swear him, and then let him do this work and put it in later as an exhibit.

The Court: And then submit it to the other side, because if they don't accept your figures, then they would have a chance to rebut. If there is anything substantial in the detail of the thing, it would be a matter of days.

Mr. Norton: Well, I am putting it in less for that purpose than to go to the foundation of the order. The Commission has made an order against the Atchison, Topeka & Santa Fe to pay moneys which were earned, and which were in the possession of the Santa Fe and

were at the time the Commission made its order, and was known to the Commission to be there and it took no steps to ascertain what other carriers were liable.

The Court (interrupting): Well, conceding that were true, then it would be only as to the shipments affected. There might be some in there that that objection would not affect and there is no way of getting at that, except by some testimony that will be in the record some way with respect to each shipment there, and then counsel can analyze it and see how it affects the total.

Mr. Norton: Well, if that is satisfactory to the court and other parties, I will swear this witness and have it understood what he can prepare and later file it; but he is prepared to show what shipments were carried by more than one carrier and the amount of the division and so on.

Mr. Burg: Well, that will only relate to the Atchison, Topeka and Santa Fe shipments, and the Missouri, Kansas and Texas Railway would have to put on witnesses.

The Court: Well, that occurred to me at the start, that that would have to be gone into extensively, if any attack was made on the individual items on this report. That being so, it ought to be gotten up, and if it can't be agreed upon, let a hearing be had upon it, so as not to take the time in reading over—are all of you defendants prepared to make the same showing at this time?

Mr. Burg: I do not think any of us are prepared to make it in detail.

333 The Court: It seems to me to be valueless unless it is in detail—if counsel think it affects the whole controversy.

Mr. Jamison: If your honor please, let me inquire of Judge Cowan, if the admission he has made, if it is also admitted that where the final carrier was not also the original carrier, that the overcharge was apportioned by the initial carrier and the intermediate carrier on some basis, but the exact basis unknown?

Mr. Cowan: I do not know to what the division relates, but inasmuch as the delivering carrier collected the money, it was our contention before the Commission that the order should be made against the delivering carrier, and that was done, and we never took into consideration in the case the connecting carrier. They were all parties to the same tariff, these tariffs are on file with the Interstate Commerce Commission and all of these facts are known to the Commission, it developed in the previous trials of the case, and there was never any contention made that they were separate carriers in the sense that they did not have rates in which they all joined, in a publication of rates, and the delivering carrier collecting the money was the one against whom the order was made. That being so, it is entirely immaterial. Now that is a matter of law and there need be no testimony in regard to it.

Mr. Burg: That's a matter for argument, Judge.

Mr. Cowan: I think it's a matter of fact. The Commission had a right to make the finding they did.

The Court: That's a matter for the court to consider.

Mr. Jamison: I want to know if Judge Cowan will admit, subject

to competency, whether the shipment—that the proceeds here or the overcharges were apportioned between the two on some basis or other. That's the only admission I ask as a fact and if he will admit that, subject to objections as to competency——

Mr. Cowan (interrupting): Well, I will admit that on the joint shipments, the railroads apportioned the freight. There is no question about it.

Mr. Jamison: And the overcharges?

Mr. Cowan: Yes, and the overcharges.

The Court: Proceed.

334 ABRAHAM L. FOX, having been first duly sworn, testified on behalf of the defendants as follows:

Direct examination.
By Mr. T. J. Norton:

Q. State your name and occupation.

A. Abraham L. Fox; I am chief clerk for the General Live Stock Agent of the Santa Fe System.

Q. And where are your headquarters?

A. Kansas City, Missouri.

Q. And I will ask you to state whether or not you are familiar with the tariffs and the divisions that were existing with respect to live stock shipments on the Atchison, Topeka & Santa Fe Railway subsequent to August, 1906?

A. Yes, sir.

Q. Have you examined in Appendix "A" of the Interstate Commerce Commission's report, supplementary report of January 12, 1914, attached to the petitions in these cases, the order made with respect to the Atchison, Topeka & Santa Fe, so as to be able to say whether any of those shipments were hauled in part by other carriers than the Atchison, Topeka & Santa Fe?

A. Yes, sir.

Q. Were some of them hauled by other carriers than the Santa Fe?

A. A good many of them.

Mr. Creason: Understand this is subject to our objection?

The Court: All subject to objection.

Q. Can you tell by the examination you have made of the tariffs and division sheets, that in those cases, the share of the participating carrier in the revenue accruing, was divided by the Santa Fe with that carrier?

A. Yes sir.

Mr. Cowan: I admit that, Mr. Norton.

The Court: He has admitted that, with respect to all the roads.

Q. Have you counted to see how many cases there are in total that were participated in by another carrier than the Santa Fe? Have you counted those?

A. I haven't counted them.

Q. Well, now then, according to an understanding, I will ask this witness to prepare a statement to be filed with the clerk as defendants' Exhibit 3, a copy to be submitted to opposing counsel, showing which of the movements in this appendix "A" were carried in part by another carrier than the Atchison, Topeka & Santa Fe, and I do not care particularly, but we will show if you want
335 it, the division of the earnings. What I am getting at is the order made as to every such transaction as that was invalid. You will show then the amount collected by the Atchison, Topeka & Santa Fe as to those shipments, the method by which divisions were made and the amount of the revenue on each shipment that accrued to the Santa Fe, and the amount that accrued to the other carrier. That's all.

Mr. Creason: To which plaintiffs object for the reason already assigned and for the reason that this is an action in tort for an overcharge of freight rates, wherein the delivering carrier was a recipient of these rates, and therefore a party to that tort and under the law is liable the same as any other party.

Mr. Norton: Does the court want to hear anything on that?

The Court: No, I don't think I could properly hear any discussion without having the whole matter before me, and having a discussion made, and answer with deliberation to both sides.

Mr. Norton: You probably want a memorandum from us.

The Court: Yes, I do, because I am not going to sort this out, if it isn't sorted out by counsel and presented to me. I couldn't stay here for days, going through a vast maze of figures.

Mr. Morrow: I understand now this witness will make such a statement and sign it and bring it in here and offer it as evidence.

The Court: Yes, but let it be submitted, of course, to the other side so they can make objections if they so desire.

Mr. Burg: Well, then, I would like to ask leave to do the same thing for the Missouri, Kansas & Texas Railway.

The Court: I think that ought to be done by all carriers. If the point is substantial, I think the same showing ought to be made.

Mr. Norton: We claim that we could not have collected any other rate than that published; that we collected the legal rate, and were liable, perhaps, on an implied contract, the money having been received after the rate was found to be too high.

336 The Court: Well, that's the legal question to be submitted.

Mr. Durham: If your honor please, might it not be understood and agreed that we may submit an analysis such as this witness is going to prepare in behalf of the Atchison, Topeka & Santa Fe, on behalf of the St. Louis & San Francisco Railroad Company, sworn to by an affidavit attached, and without objection on the part of counsel?

The Court: Well, subject to their objections. That's for counsel to say. They say that may be done in that way subject to their general objections to the whole matter, and subject to their right to inspect. In this cause, the witness has been sworn and he may

file such a signed statement as his statement and as part of his evidence. I think we will have to arrive at some general conclusion as to time when we get through.

Mr. Sebree: That applies to all defendants?

The Court: Yes.

Mr. Creason: If counsel for plaintiff desire, after these findings or figures are made up and submitted to them, it is understood we will look over, if we find it proper to do so, to check up their records.

The Court: Yes. How long will it take you (addressing the witness Fox) to get that up?

The Witness: For the Santa Fe, I could probably get it out to-day or tomorrow.

The Court: Well, I don't know what the situation of the others will be.

Mr. Morrow: I think each company should have its own man.

The Court: I think so. There will be ten days then in which that may be done, and then five days after service of same for reply.

Witness excused.

Said statement prepared by the defendant The Atchison, Topeka & Santa Fe Railway Company, together with the letter to the court accompanying same, is marked by the reporter as "Defendants' Exhibit No. 3, G. W. S.", is filed herewith, made a part of this record, and is in words and figures as follows, to-wit:

337 The Atchison, Topeka and Santa Fe Railway System.

Live Stock Exchange, Kansas City, Mo.

Live Stock Department.

F. S. Brooks, General Live Stock Agent.
T. Y. Horton, Asst. General Live Stock Agent.
W. A. Combs, Asst. General Live Stock Agent.

Kansas City, Missouri, December 9, 1915.

Hon. A. Van Valkenburgh, Judge U. S. Court, Western District, No. 306 Federal Building, Kansas City, Mo.

DEAR SIR: In compliance with your order for the writer to prepare statement taken from Appendix "A," pages four to seventeen inclusive of Exhibit "A" of Plaintiff's original Petition No. 4308 and 4320:

Am handing you herewith the original, signed as required.

Yours truly,

(Signed) A. L. FOX.

A. L. F. J. L. H.

Copy—Mr. Norton, General Attorney, Chicago, Illinois.
Am attaching your copy of plaintiff's petition No. 4308.
Copy—Mr. Morrow.

338 STATEMENT TAKEN FROM APPENDIX "A", PAGES 4 to 17, INCLUSIVE, EXHIBIT "A", PLAINTIFF'S ORIGINAL PETITION NO. 4308 - CLAIMS AGAINST THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE DELIVERING LINE - AMOUNTS DUE FROM EACH CARRIER, IF ALLOWED.

Shipper	Origin	Rate Paid	Rate Ordered	Amount Refund	Int.	Proposition Due from Other lines (FW&DC-31%)	Proposition Due from A. T.& S. F.
Aaron & Hughes	Giles, Tex.	34½c	31½c	13.20	5.42	5.77	12.85
Mrs C. Adair	Southard, Tex. Clarendon, " Goodnight, "	34½c	31½c	1028.85	398.67	442.53	984.99
Badgley & Massie,	Claude, Tex.	34½c	31½c	19.41	6.10	7.91	17.60
Badgley & Taylor,	" "	34½c	31½c	33.90	9.95	13.59	30.26
Bagwell, E. T.	" "	34½c	31½c	19.80	7.24	8.38	18.66
Beverly & Harding,	Tascosa, Tex.	34½c	31½c	19.92	12.41	14.11	31.42
"	Channing, Tex.	34½c	31½c	13.20			
Beverly, L. C.	Clarendon, Tex.	34½c	31½c	13.80	6.09	6.17	13.72
Bonner, A. T.	Memphis, Tex.	34½c	31½c	14.88	5.44	6.30	14.02
Bourland, F. L.	" "	34½c	31½c	13.20	4.85	5.60	12.45
Bourland, W. M. & Bro.	Giles, "	34½c	31½c	33.99	10.82	13.89	30.92
Browder, J. M.	Giles, Tex.	34½c	31½c	179.59	52.13	71.83	159.89
Brummett & Fuqua,	Claude, Tex.	34½c	31½c	26.40	8.49	10.82	24.07
Bugbee, T. S.	Southard & Clarendon, Tex.	34½c	31½c	105.69	39.71	45.07	100.33
Callahan, S. W.	Claude, Tex.	34½c	31½c	153.24	62.46	66.87	148.83
Campbell, R. A.	Claude, Tex.	34½c	31½c	27.60	10.25	11.73	26.12
Casper, J. M.	Memphis, Tex.	34½c	31½c	33.00	14.25	14.65	32.60
Cobb, L. C.	Claude, Tex.	34½c	31½c	13.83	6.00	6.15	13.68

PAGE 2.

Shipper	Origin.	Rate Paid	Rate Ordered	Amount Refund	Int	Proportion Due from Other lines	Proportion Due from A. T. & S. F	
Coffee, E. E.	Giles, Tex.	34½c	31½c	27.87	10.34	11.85	26.36	
Continental Land & C. Co.	Estelline, "	34½c	31½c	614.52	202.79	253.37	563.94	
Crabtree, & Caldwell,	Clarendon, "	34½c	31½c	178.02	75.25	78.51	174.76	
Fergerson, Britian, Van Eaton	Clarendon, " Rowe,	34½c	31½c	191.85	74.31	82.51	183.65	
Ferguson, G. C.	Clarendon, "	34½c	31½c	7.44	3.24	3.31	7.37	
Gibson, J. H.	Memphis, "	34½c	31½c	13.20	4.34	5.44	2.10	
Gist, John	Giles, Tex.	34½c	31½c	26.40	10.94	11.29	25.15	
Goffnet. F. J.	Memphis, " Giles "	34½c	31½c	86.97	28.93	35.93	79.97	
Hall, J. F.	Clarendon, "	34½c	31½c	19.80	6.43	8.13	18.10	
Hall, J. G.	Memphis, Tex	34½c	31½c	81.21	31.43	34.92	77.72	
Horn, Joe	Clarendon, "	34½c	31½c	33.90	14.30	14.94	33.26	
Horn & Whittington	Clarendon, "	34½c	31½c	33.00	12.32	14.05	31.27	
Hunter, N.	Claude, Tex.	34½c	31½c	13.32	4.25	5.45	12.12	
Iowa Land & C. Co.	Clarendon, "	34½c	31½c	53.82	19.11	22.61	50.32	
Jackson, Jno.	Memphis, "	34½c	31½c	46.41	19.97	20.58	45.80	326
Jones, A. B.	Memphis, "	34½c	31½c	14.13	4.37	5.74	12.76	
Leary & Blum,	Memphis, "	34½c	31½c	13.20	4.24	5.41	12.03	

Shipper	Origin	Rate Paid	Rate Ordered	Amount Refund	Int.	Proportion Due from Other lines	Proportion Due from A. T. & S. F.
Lewis & Letts,	Claude, Tex. Clarendon, "	34½c	31½c	60.21	22.19	29.54	56.86
Lewis & Molesworth,	Goodnight, " Clarendon, "	34½c	31½c	122.76	43.42	51.52	114.66
Lewis & Pyle,	Goodnight, "	34½c	31½c	55.68	20.88	23.73	52.83
Lewis, W. J.	Clarendon, "	34½c	31½c	19.26	7.81	8.39	18.68
McElreath, R. T.	Memphis. "	34½c	31½c	13.20	4.10	5.36	11.94
McMurtry, Bros.	Clarendon, "	34½c	31½c	14.13	4.48	5.77	12.84
Martin, J. E.	Rowe, "						
Matador Land & C. Co.	Clarendon, " Estelline, "	34½c 34½c	31½c 31½c	26.40 533.44	11.62 172.02	11.79 218.09	26.23 486.77
Milam, W. M.	Giles, Tex. Memphis, "	34½c	31½c	27.96	9.44	11.59	25.81
Montgomery & Goffnet,	Memphis, "	34½c	31½c	25.65	11.09	11.39	25.35
Montgomery, J. A.	Memphis, "	34½c	31½c	108.81	47.28	48.39	107.70
Moore, F. & Co.,	Clarendon, "	34½c	31½c	13.20	5.61	5.83	12.98
Moreman, W. H.	Giles, Tex.	34½c	31½c	41.67	13.41	17.07	38.01
Munsey, C. M.	Clarendon,	34½c	31½c	33.00	14.02	14.58	32.44
Murray & Bosa,	Giles, Tex	34½c	31½c	39.60	16.81	17.49	38.92
Owen, J. W.	Clarendon,	34½c	31½c	51.00	15.90	20.77	46.22
Patterson, J. A.	Estelline; "	34½c	31½c	33.12	10.88	13.61	30.39
Pyle, T. M.,	Estelline, Newlin, "	34½c	31½c	35.19	11.39	14.44	32.14

PAGE

Shipper	Origin	Rate Paid	Rate Ordered	Amount Refund	Int.	Proportion Due from Other lines	Proportion Due from A. T. & S. F
Ramsey, C. F.	Clarendon,	34½c	31½c	40.44	17.19	17.87	39.76
Rattan & Murray,	Giles, Tex.	34½c	31½c	20.22	6.52	8.29	18.45
Reeves, O. T.	Clarendon,	34½c	31½c	60.72	25.92	26.86	59.78
Rowe, Alfred Estate	Clarendon,	34½c	31½c	92.64	29.35	37.82	84.17
Sayre, S. T.	Clarendon	34½c	31½c	13.38	4.29	5.48	12.19
Smith, G. L.	Memphis,	34½c	31½c	6.60	2.70	2.88	6.42
Swearingen, H. S.	Memphis,	34½c	31½c	202.86	69.89	84.55	188.20
Wallace, J. W.	Giles, Tex.	34½c	31½c	47.19	16.95	19.88	44.26
Watson, J. O.	Claude, Tex	34½c	31½c	125.79	46.18	53.31	118.66
Wilson, W. B.	Clarendon,	34½c	31½c	118.74	44.33	50.55	112.52
Witherspoon, F	Goodnight,	34½c	31½c	133.98	50.66	57.24	127.40
Yokley, D. A. Estate	Memphis,	34½c	31½c	274.20	88.05	112.30	249.95
Cauble, C. M.	Stanton, Tex.	43c	40c	13.20	4.24	(T&P-39%) 5.06	12.38
Elison, T. H.	El Reno, Okla.	31c	28c	13.20	4.33	(StLE&W-25%) 4.38	13.15
				5036.00	2038.98	2377.86	5297.12

341

342 Mr. Norton: I understand also from Mr. Cowan that he will not object to a statement in this record as to the parties defendant here that are in the hands of receivers, so I will not be put to the proof. The Chicago, Rock Island & Pacific Railway Company is in the hands of receivers; the Chicago & Eastern Illinois Railway is in the hands of a receiver; the Missouri, Kansas and Texas Railway Company, the Missouri Pacific Railway Company, the St. Louis, Iron Mountain & Southern Railway, the St. Louis & San Francisco Railroad Company, are parties defendant, now in the hands of receivers.

Mr. Cowan: We do not concede, if your honor please, the materiality of that.

The Court: I understand.

Mr. Cowan: But I proposed to Mr. Norton that we would not require proof of it.

Mr. Norton: That's all.

Mr. Cowan: Now in regard to this statement.

Mr. Norton (interrupting): Just a moment. I was going to ask you in addition to that—well, I think the Commission's report shows that—that some of these shipments moved on the various lines.

Mr. Cowan: I want to impress upon the court, that it is unnecessary to take time to file statements to show the joint line shipments, for the reason that the point of origin is named in all of these cases, and where the point of origin is off of the delivering line, that's plain to be understood, and I think that Mr. Williams, assistant secretary of the Cattle Raisers Association, if your honor thinks it ought to be introduced, to which we object, could make a statement to show all of the shipments that originated off the lines delivering them.

The Court: Well, this man here for the Santa Fe could have shown it, but we didn't want to take up the time, and then besides the defendants might not want to be bound by the testimony of Mr. Willias so that they may make those statements and they will be tendered in the manner that has been stated. Now it may be that the court will agree with you and rule that they are irrelevant and immaterial, in which event the record will not be encumbered with them.

Mr. Cowan: Well, the point of origin is stated in each one of these shipments, and it's plain to be seen by anyone who knows
343 the point of origin, whether it was on the line of the delivering carrier or not.

The Court: Well, the court will always take judicial notice of all those facts with respect to location. There isn't any more time to be taken at the hearing than has already been taken on that subject. It will be handed in in a supplemental way.

Mr. Norton: Now—except as I stated when I put in the testimony—there are some objections that I have as to the competency and materiality of that evidence and the insufficiency of it, then we shall be prepared to rest. I should like about half an hour or so to go into this record with you either now or after luncheon.

The Court: Of course you shall have it if necessary. My question of you was this; you introduced this in evidence, the object being to show that there was substantially no evidence before the Commission which would justify the finding.

Mr. Norton: And that the evidence before it was incompetent.

The Court: Now why should a discussion of that differ from a discussion of any other point in the case? Why shouldn't that be more properly pointed out in your memorandum than before the court in discussion?

Mr. Norton: Well, I was afraid in leaving it to memorandum that I would not, perhaps call your honor's attention to the particular things on which I introduced the evidence as clearly as I could do it verbally.

The Court: Well, I should think you would be more certain to do it in memorandum than in a verbal statement, and I certainly would be more likely to know what you say about it. If there is anything that you think necessary for the record, that you should state into the record to preserve any points that you want to make, I should think that should be done now; but with reference to any analysis for presentation to the court, I should think that should be done in presentation of the other points.

Mr. Norton: Then, if your honor will give me until one or one thirty, or until such time as you return, I think I can prepare a short statement on the points I want to discuss and with that understanding——

344 Mr. Morrow: I want to make, on behalf of the Illinois Central Railway, some proof as to the excess of the amount claimed.

The Court: You may proceed.

Mr. Morrow: I was advised of this matter only yesterday.

WARNER S. THOMPSON, having been first duly sworn, testified on behalf of the defendants as follows:

Direct examination.

By Mr. Morrow:

Q. State your name.
A. Warren S. Thompson.
Q. And where do you reside?
A. Chicago, Illinois.
Q. What is your occupation?
A. Chief clerk to the auditor of freight receipts of the Illinois Central Railway Company.
Q. Have you gone over Appendix "A" attached to this petition?
A. Yes sir, I have.
Q. You know what that is?
A. Yes sir.
Q. Now having reference to Appendix "A," as I get the advice from Mr. Fletcher, the attorney, there is apparently an overclaim here of $382.80

A. That's right—plus the interest.

Q. Plus the interest. Now if you have the data there from the records, I will ask you to turn to it as speedily as you can and indicate to the court how that's made up and why it happens?

Mr. Cowan: We object to that, if your honor please. They were before the Interstate Commerce Commission, and the order was there made and they had an opportunity to show what the amount of overcharge was and the order has been made, and it is not competent here.

Mr. Morrow: It is on the prima facie.

The Court: Why under the order of the Commission, it is not conclusive and not made so by law.

Mr. Morrow: It's on the prima facie.

The Court: Proceed with the evidence.

Mr. Morrow: Go ahead, Mr. Thompson.

A. There appears in Exhibit "A" one entry of 58 cars shipped from Monahans, Texas to Chicago territory, in the column
345 "Rate paid" is shown 66¾ cents; in the column "Rate ordered" is shown 63¾ cents. A check of the records in regard to these 58 cars shows that only 63¾ cents was, as a matter of fact, paid on these shipments.

Q. As appears on your records?

A. Yes sir, so that no overcharge exists on those 58 cars.

Q. If it appears otherwise in any statement filed with the Interstate Commerce Commission it was an oversight and error?

A. It must have been, yes sir.

Q. Now that's one item. Is there any other item or items? I am getting at this amount of $382.80.

A. That's the item. It's carried on two pages of our supplementary—of our statement here; but it's all on account of shipments between Monahans and Chicago.

Q. The award therefore of the Interstate Commerce Commission against the Illinois Central is too large by $382.80?

A. Yes sir, and the interest.

The Court: Well, was that shipped while the old rate was in force?

The Witness: That was shipped in September and October, 1906.

The Court: After the rate prescribed by the Commission went into effect?

The Witness: No, that was prior to the date of the——

The Court: How did you come to ship at less than your published rate?

The Witness: I can't say.

Mr. Morrow: You are speaking of what you found and find by the records?

A. Just what I find by the records.

Q. Well, now, with reference to the—I could go—pardon me, this is not for the record—this witness could go very briefly into this matter of distribution to connecting lines, but perhaps I had better reserve that and do it later, to save time.

Mr. Morrow: I want this evidence to be in No. 4311, the other case against the Illinois Central. If we ever have to try No. 4311, I want that to be considered as evidence in that case also.
Mr. Creason: Yes, subject to its competency.

346 Cross-examination.

By Mr. Cowan:

Q. How did you get your information?
A. As regards these particular shipments?
Q. Yes.
A. We have in our files certified copies of the original way bills on which these shipments moved to destination; they show a rate of 63¾ cents.
Q. Where did you get your information—the files from where?

Mr. Morrow: Where are the files, he inquires?

A. I have the files here.
Q. You are going by that?
A. Well, I supplemented that information before leaving Chicago, by getting into communication with the agent at destination and having him examine his station records; and I also examined the records of the reporting of this revenue with interested lines, and I could find no records of any additional collections on these shipments.
Q. You have no personal knowledge of it?
A. No personal knowledge; it's all from the records of the Company; I wasn't in the employ of the company at that time.
Q. You have looked up the records and what you are testifying to is what the records show that you have examined?
A. Yes sir.
Q. And you know nothing other than that?
A. Nothing other than what the records show.
Q. You were not present before Commissioner Prouty when this case was heard in Chicago?
A. No sir.
Q. You were not then in the employ of the Company?
A. No sir.

Q. Well, if your honor please, we object to that evidence as being purely hearsay and move it be stricken out.
The Court: Well, your objection and motion may be lodged and the court will pass upon it later.

Witness excused.

Mr. Jamison: I would like to have Mr. Burg sworn, please.

C. S. Burg, having been first duly sworn, upon his oath testified on behalf of the defendants as follows:

Q. State your name and occupation.

A. C. S. Burg, Commerce Counsel for the Missouri, Kansas
347 & Texas Railway Company, St. Louis, Mo. I might say, in explanation of the *the* testimony I am about to give, that we make the law point in our answer that the order against the delivering line is invalid, for the reason that it would deprive us of our property without due process of law, because other carriers participated in the haul, and some of them are now in the hands of the receivers, and if we were compelled to pay this amount, we could not recover against them, because they are now insolvent.

Mr. Creason: Which we do not admit, your honor. They might be solvent although in the hands of receivers.

A. (Continuing:) I am attorney for the Missouri, Kansas & Texas Railway Company, with headquarters at St. Louis; I have been employed by that company in various capacities for about twenty years. The Missouri, Kansas & Texas Railway Company is a Kansas corporation, operating lines of railway in the states of Missouri, Kansas and Oklahoma. It does not have or operate any line of railway in the state of Texas, and all shipments shown in the Appendix to the Commission's order, that originated in the State of Texas, did not originate on the line of the Missouri, Kansas & Texas Railway Company, the delivering carrier against whom this award is made.

Mr. Creason: It is understood we object to this the same as we did the other?

Mr. Burg: Of course, subject to any objection. Furthermore a great many of the shipments originated on the line of the Missouri, Kansas & Texas Railway Company of Texas, in the State of Texas. The assets and property of that corporation are now in the hands of a receiver, under appointment by the United States District Court of Dallas, Texas, on September 27, 1915. A number of the shipments originated in the state of Texas on the line of the International & Great Northern Railroad Company. That company was placed in the hands of a receiver a number of years ago, and under the reorganization, a foreclosure and sale was had and a new corporation organized under the name of the International & Great Northern Railway Company. The International & Great Northern Railway Company is now in the hands of a receiver. That's all.

Mr. Deatherage: To all of which we object for the reasons heretofore stated, as incompetent, irrelevant and immaterial.

348 Cross-examination.

By Mr. Cowan:

Q. Is it not a fact that the Missouri, Kansas & Texas Railway Company of Kansas, as you call it, is the owner of the stock of the Missouri, Kansas & Texas Railway Company of Texas?

A. It is not a fact.

Q. Well, isn't it a fact that the stock is deposited in New York with the Central Trust Company, I believe that's the name—some

trust company—for the benefit of the stockholders of the Missouri, Kansas & Texas Railway Company of Kansas?

A. I am not aware of that, Judge.

Q. Well, you have the same Traffic Manager, Mr. West at Dallas, the same traffic manager of both roads?

A. That is correct.

Q. And they testified before the Railroad Commission—Mr. Van Buskirk testified that he worked on both lines and didn't know which he was paid by?

A. Well, is that a question, or testimony?

The Court: Well, it's asked in the form of both. If he so testified, I suppose it appears in this.

A. It's in the rate proceedings before the Railway Commission of Texas.

The Court: I don't suppose that would be probative in its nature.

Q. Isn't it a fact that your line passes through this district here and comes into Kansas City?

A. It is not a fact.

Q. And that your trains run right out to Fort Worth, Houston and San Antonio?

A. The trains of the M. K. & T. Railway Company of Texas do.

Q. Don't you understand that the system makes an annual report to its stockholders including the entire system?

A. I do. That's simply for corporate purposes.

Q. And isn't it treated by the Interstate Commerce Commission as one railroad?

A. I don't know whether it is or not.

Q. But don't they make reports that way?

A. I think they do make what they call a system report to the Commission, but the M. K. & T. Railway and the M. K. & T. Railway of Texas are separate and distinct corporate entities.

349 Q. And they have an arrangement whereby the interest and bonds are all guaranteed by the entire system?

A. No, I don't think that's correct, Judge.

Q. Wasn't that arranged for by the act of the Legislature of Texas—about the bonds of the Missouri, Kansas & Texas Railway Company of Texas?

A. I am not familiar with the details of that Act now—passed in 1891, I believe.

Q. How about the receivership, who is the receiver of the road in Texas?

A. C. E. Schaff, appointed by Judge Meek of Dallas, Texas.

Q. Who's the president of the corporation railway?

A. Mr. C. E. Schaff.

Mr. Jamison: In connection with Mr. Burg's testimony, I would like to have considered in evidence the statute of the State of Texas,

which requires all railway corporations engaged in business in that state to be incorporated under the laws of that state.

The Court: The court takes judicial notice of that.

Cross-examination.

By Mr. Deatherage:

Q. Is the M. K. & T. Railway Company of Kansas now in the hands of a receiver?

A. It is.

Q. Who is the receiver for that company?

A. Mr. C. E. Schaff, appointed by Judge Adams at St. Louis, Mo.

Q. And that's the same C. E. Schaff who is receiver of the Texas Company?

A. Yes, but appointed by a different court.

Q. Who is the president of the Kansas corporation?

A. Mr. Schaff.

Q. He is president of both corporations, and receiver of both corporations?

A. Yes.

Q. Now isn't it a fact that the two corporations are operated together as one system and one line of road?

A. It is not a fact.

Q. Don't they run all their trains from Kansas City and St. Louis through to Galveston and San Antonio as one road?

A. Well, the two companies have a joint arrangement.

Q. Don't they advertise all their business as one road?

A. No; that is not correct.

Witness excused.

350 Mr. Morrow: In some of the answers—I hold in my hand, if the court please, an answer in No. 4320, Spiller, et al. vs. Missouri, Kansas & Texas Railway Company, et al., which contains an allegation to this effect: (Reading from answer) "Defendant further says that there is pending in this same court another cause entitled, 'E. B. Spiller vs. Illinois Central Railroad Company (this answering defendant), in and by which it is sought to recover upon the same claims and for the same cause of action as set forth in this petition against said Illinois Central Railroad Company, and this defendant says that it ought not be allowed to have, maintain and prosecute both of said suits in this Court."

I would like to have so far as necessary, enough of the clerk's record showing the filing and pendency of that other suit introduced in these cases, so as to show or give some basis for the court to act upon when he comes to pass upon it. Wherever there are duplications. What I mean is this, in these single suits there ought to be put in evidence here sufficient memorandum of the clerk's record here to show the pendency of these suits at this time—they have several single suits.

The Court: Well, I know there are several of the single suits that have been referred to heretofore.

Mr. Morrow: Yes and let that be considered in evidence in that way.

Mr. Deatherage: As I understand it and I want to be sure I am right, this testimony that has been offered has been in cases No. 4308 and No. 4320, those are the two cases that we are now trying?

Mr. Morrow: With the solitary exception that in No. 4311, that if it is ever tried, Mr. Thompson's testimony will be considered as in evidence in that case.

Mr. Norton: And is it not to be so in the other cases too?

Mr. Deatherage: If we try the other cases, yes.

Mr. Morrow: Let the record show, that if these other cases are ever tried, this evidence introduced here will be considered in evidence in those cases.

Mr. Creason: Under those same conditions.

Mr. Norton: Now I have some declarations of law—I want to rewrite one or two—and if you will take a recess, I will review and rewrite those, and finish up the record after recess.

351 Mr. Morrow: Let me understand, does your honor want the declarations of law submitted now, or when we submit the brief

The Court: Of course the court will not pass on them until I pass on the case, and that will apply to all parties plaintiff and defendant.

Mr. Jamison: We would like, if your honor please, at this time, at the close of all the evidence, to offer a declaration of law in the nature of a demurrer.

Mr. Morrow: In the nature of a peremptory instruction, that on the record and the law in the case the judgment should be for the defendants. We will write that out and deposit it with the clerk.

The hour of twelve o'clock noon having arrived, an adjournment was taken until two o'clock P. M., of the same day.

(*Declarations of Law Requested by Defendants.*)

At two o'clock P. M., December 8th, 1915, court reconvened and the following proceedings were had, present, same as before:

Mr. Norton: We have prepared a number of declarations of law, which we submit, and they are entitled in Nos. 4308 and 4320, the two cases having joint defendants, but they will be submitted along with the stipulation that we had this morning [rhat] they will apply to the other cases, if they should come up for trial. Now I understand there are some other declarations to be asked.

Mr. Morrow: I understand, your honor, we may submit further declarations if we desire.

Mr. Jamison: If your honor please, I understand the declarations are offered by Mr. Norton on behalf of all the defendants and I have two additional that I desire to offer on behalf of the defendants.

The Court: They may be filed in the case.

Said declarations of law submitted by defendants, are filed with the clerk of said court, and are in words and figures as follows, to-wit:

352 In the District Court of the United States for the Western Division of the Western District of Missouri, at Kansas City, April Term, 1915.

Nos. 4308 and 4320.

E. B. SPILLER, Plaintiff,

vs.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY et al., Defendants.

Declarations of Law.

The defendants request the court to declare the law to be:

I.

That the claims for reparation set out in the petitions in this case, are barred by the two year limitation of the Act to Regulate Commerce, because no claim was filed with the Interstate Commerce Commission by any shipper who paid the freight rate condemned by the Commission or by any one in his behalf.

II.

That neither the plaintiff Spiller nor his alleged assignor Crowley, was authorized by the Act to Regulate Commerce to file claims for reparation with the Interstate Commerce Commission, and therefore the filings made by them were void and *and* of no effect.

III.

That the Interstate Commerce Commission was without jurisdiction to entertain the claims filed by the plaintiff Spiller, and by said Crowley, or to make an award of reparation thereof, and therefore the award on which this action is based was unwarranted, contrary to law and void.

IV.

That the Interstate Commerce Commission did not have before it any legal or competent evidence of an assignment by any shipper to the plaintiff Spiller, or to said Crowley, relating to any of the claims involved herein, and its finding of an assignment thereof was unsupported by competent evidence and was therefore void and contrary to law.

V.

That the Interstate Commerce Commission had no evidence before it of injury done to the plaintiff Spiller or his alleged assignors by the defendant, or a pecuniary or other damage sustained by said Spiller or said alleged assignors by reason of anything done or omitted to be done in contravention of the Act to Regulate Commerce, and therefore the finding and award made by the Commission to Spiller was contrary to law and void.

VI.

That there was no evidence before the Interstate Commerce Commission of the payment of freight by any individual, and the finding and award of damages against defendant was therefore unsupported by the evidence and contrary to the Act and void.

VII.

That the award made by the Interstate Commerce Commission against the defendant as a delivering carrier in cases where the haul and the revenue derived from the rate condemned by the Commission were participated in by other carriers was contrary to law and void, and would deprive defendants of their property without due process of law.

VIII.

That the holding of the Interstate Commerce Commission at the hearing that "the payment of an unreasonable charge imports damage—that of itself shows damage" was contrary to law, and its finding that the plaintiff Spiller as assignee was thereby damaged, was a nullity.

IX.

That the Interstate Commerce Commission erred in not granting the motion of the defendant to dismiss Spiller's petition for reparation, for failure of proof of damage done by the defendant to Spiller, in violation of the Act to Regulate Commerce.

X.

That the Commission exceeded its statutory power in prescribing in the form of an order of reparation a retro-active rate for a term of more than two years preceding the date of its award and order, and also in prescribing a maximum rate to be charged for a term of two years after said date, for the reason that the Act to Regulate Commerce empowers it to prescribe a rate for the future only.

XI.

That the award of interest made by the Interstate Commer
Commission against the defendant, and in favor of t
354 plaintiff Spiller, on unliquidated damages for a time prior
the date the damages were definitely ascertained, was contra
to law and void.

XII.

That the award of any interest by the Interstate Commerce Co
mission to the plaintiff Spiller was contrary to the Act to Regul
Commerce and void.

XIII.

That the evidence here before the court is insufficient in law
warrant or support a judgment.

XIV.

That upon the entire record and the evidence, and under the la
judgment should be entered herein for the defendant.

The Court declares the law to be that in no event can all or a
of the plaintiffs herein recover against any or all of the defenda
herein, who are sued as the final or delivering carrier in any amou
or for any sum in excess of the amount, if any, collected and retai
by such delivering or final carrier, as its respective part or share
to and retained by it under the rules, regulations or agreements ex
ing among said carriers, initial, intermediate or final, in respect
the division of freights received on account of the shipments refer
to and mentioned in the findings and order of reparation made by
Interstate Commerce Commission.

The Court declares the law to be that the finding of the facts a
award of reparation herein by the Interstate Commerce Commissi
is wholly unsupported by any legal or competent evidence, and
the Court to accept the same as sufficient to make it a prima fa
case in favor of all or any of the plaintiffs herein against all or a
of the defendants herein, would be to deprive the said defendants
their rights and property without due process of law, and deny
them the equal protection of the law, in violation of the Fourtee
Amendment of the Constitution of the United States.

355 Mr. North: Now my recollection is that this sheet wh
the Secretary of the Cattle Raisers Association was to prep
and submit as a sample of the exhibits that were introduced bef
the Commission was offered this morning as Defendants' Exhibi
and I now have that to give to the reporter, being entitled J. H. P
terson, claimant, Estelline, Texas, in account with the Atchis
Topeka & Santa Fe Railway Company, delivering line," and t

according to the agreement this morning is the form of blank on which evidence was presented to the Commission with respect to all the shipments.

(Said Defendants' Exhibit 2, is set out in full on Page 40 of this record.)

Mr. Deatherage: Well, Mr. Norton, I understand that the part in typewriting is what the shipper originally furnished and this part in pencil is what the railroad companies put on in checking it up.

Mr. Norton: Yes, I think you are right; I should have stated that.

Mr. Cowan: That is not a copy of the original claim; it is only an abstract that was furnished the railroad.

Mr. Norton: Well, those abstracts as checked by the carriers, as shown on this sheet were then introduced by you in evidence before the Commission.

Mr. Cowan: Yes, and the others were filed and are now on file with the Commission.

The Court: Well, this (Defendants' Exhibit 2) is supposed to be the evidence in support of the claim?

Mr. Norton: Yes.

Mr. Deatherage: Not all the evidence.

Mr. Creason: This is just an abstract checked by the railroad and put in for brevity's sake, in addition to the claim.

Mr. Deatherage: We had a whole trunk load of those.

Mr. Norton: Yes, and that's what I want to get away from in this trial.

The Court: When you say a "trunk load," do you mean others of a similar character?

Mr. Cowan: No. The original claims were filed with the Interstate Commerce Commission.

356 The Court: I understand the original claims were filed but we are talking of the evidence supporting them.

Mr. Creason: This is a mere abstract of the claim which was handed over to the railroads to be checked for the verity of the claim; they checked it over and the Commission found that no claim was right unless checked and corroborated with their figures.

Mr. Norton: Of course it will appear to you that no shipper filed a claim at all. The claims were filed within the statutory time, we do not raise any question about that, and then the claims came on for hearing and proof was offered in support of the claims theretofore filed. Now I am offering a sample sheet of the proof offered to the Commission as a proof the plaintiffs made as a right for reparation.

Mr. Deatherage: I haven't read the report, which purports to be the testimony before the Commission, which you filed as one of your exhibits, and I don't know what it contains; but I want to ask you whether or not it was conceded by the railroad companies before the Commission that all these claims referred to in Appendix "A" had been checked by the railroad companies and found to be correct.

Mr. Norton: Well, our admission was carefully limited to the fact that all shipments moved as shown in the exhibits, with certain exceptions, where they could not be found. The record that I intro-

duced shows—for instance Mr. Crowley shows so many thousand carloads via the Santa Fe, which the Santa Fe was unable to find in checking up, and our admission is that the other carloads moved as *stated and that the rate* was collected by the delivering carrier.

Mr. Deatherage: Well, those that you did not check, was anything allowed for them?

Mr. Norton: Well, the records shows that the Commission—let us say the record shows that 5,000 carloads via the Santa Fe; we checked it up, say, and found only 3,000 carloads. The Commission entered an order for 4,500, something between the two, respecting which there was no proof.

Mr. Creason: I notice it is not in the report of the Commission.

Mr. Deatherage: The report of the Commission is that only those claims were allowed as checked up by the railroads and found to be correct.

Mr. Norton: Well, I suppose the Commission's finding on that, we couldn't go behind; but this appears in the record, that there
357 were about 1000 cars charged against the Santa Fe that the record did not disclose, but what the Commission did about that, my memory does not serve me now; but that is immaterial on the main points.

Mr. Morrow: What happened before the Commission I have no personal knowledge of, but I presume it will be conceded that there were no claims filed there except by assignees—no claims filed by individuals.

Mr. Deatherage: There were a number of claims filed by individuals.

The Court: I thought there were 250 referred to yesterday in argument, about 250 joined, where they were the original shippers and not the assignees.

Mr. Deatherage: Those were in No. 4320; all the claims in No. 4308 were filed by the assignees. This statement was corrected in oral argument and briefs as follows:

At P. 80 of the record this court it appears that Mr. Deatherage stated that all the claims represented in case No. 4308 were filed by the assignee. What Mr. Deatherage meant to say was that all claims represented in No. 4308 were assigned before the order of reparation was made and the order was therefore in favor of the assignee.

Mr. Norton: Except in these subsequent ones.

Mr. Deatherage: I say all the claims represented in No. 4308 were filed by the assignee; all those in No. 4320 were filed by the individual shippers and some of them afterwards assigned to Mr. Spiller, and those claims here joined in No. 4320.

Mr. Norton: Now it was my intention to draw off from the record of the testimony before the Commission a number of things which we desired more particularly than other things to raise an objection as to the competency and materiality, and as to its being hearsay and as to its being immaterial, that should be excluded from the consideration of this court, in weighing the evidence in this case, which

is a trial de novo. In these cases you are aware the defendant has a right to go back and inquire into the reasonableness of the rate that was ordered out by the Interstate Commerce Commission, and the rate that was ordered in, but we have not attempted to do that. It would be laborious as to time and labor, but in these other respects this is a trial de novo, and the Act of Congress makes the order and report of the Commission prima facie evidence only—it makes that a kind of witness. Now we put in this witness as contra-proof and we want this court to pass upon a number of objections that
358 we take to that evidence, as to the competency of it before the Commission and the competency of it in this court, the consideration of which would amount to the taking of our property without due process of law. I am not going, as I say, into this particularly now because it would be difficult and I did not have time during the noon recess to do it; but I want to call your honor's attention to page 101 of this record, and to read this statement:

"Commissioner Prouty: I understand Mr. Cowan to say that he expects to ask in every instance an order in favor of the original shipper.

"Mr. Cowan: That is correct. While assignments were made to the secretary of the Cattle Raisers Association that was a mere matter of trust in order that he might have control of them for the purposes of the suit. He was not really an interested party; he was only an assignee for the purposes of handling the case. I might say it was brought about by ignorance of what the law is in such a case; but in all cases the claim is in the name of the shipper, and while the assignment was made, the assignment was merely a form to the secretary of the association."

I call your attention to that because the order of the Commission subsequently made is absolutely at variance with the evidence on the trial of the case. I refer to page 121 of this record. Mr. Cowan in answer to a question by Commissioner Prouty—I will read Commissioner Prouty's question, because it goes to a question you asked a while ago——

"Commissioner Prouty: It seems there are some five thousand carloads involved in this exhibit against the Atchison, Topeka & Santa Fe, and that they locate something over 4,000 carloads, leaving approximately a thousand carloads not accounted for, so that there are one thousand carloads in that case with respect to which you will have to submit further proof in respect to the facts of the shipment. Then it occurs to me that you must in some way submit proof to us that the consignor in fact paid this freight. In how many do you ask to have an order made in each one of these cases?

"Mr. Cowan: I think the simple way to do that, and I have thought about that some, is to have it made in the name of the Cattle Raisers Association of Texas, account of and for the shipper, the Association being the representative of the shipper. We file our claims in each case——

"Commissioner Prouty: Have you an idea that you could bring suit in court in the name of the Cattle Raisers Association?

359 "Mr. Cowan: Well, that difficulty also was very thoroughly considered, and for that reason, when these claims were filed we aimed to put in the names of the shippers, thinking if we had to bring the suit in court——

"Commissioner Prouty: Would not the simple way be to enter up in all cases an order in the name of the shipper?

"Mr. Cowan: I think so."

Now I think with the statement that no shipper ever took the stand to prove a claim against these defendants, and what I have already presented to you, that the order finally made by the Interstate Commerce Commission was entirely at variance with the theory of the suit, and was in compliance with a request, as I pointed out, of counsel for the assignee, and was wholly void as being contrary to the record and beyond the power of the Commission. Now in addition to these assignments that I have made with respect to this evidence, I would like in the memorandum that you have asked us to file, to set up in orderly form the parts of this record to which we take exceptions, and to state the reason why, and with that, as far as I am concerned, we submit the case.

Mr. Jamison: With respect to the case against the Missouri Kansas & Texas Railway, Mr. Burg and myself have been so situated during the last month or two that we could have no conference with regard to it, and the conference by which we submitted the case today, was originally reached at a conference where the Missouri, Kansas & Texas was not represented. I was unable to get here until midnight last night. Now the importance of this case to the Missouri, Kansas & Texas Railway Company lies in this: that if a finding here and judgment were rendered against it, it would be in a sum of perhaps some sixty or $65,000. From the standpoint of dollars and cents, our company is more interested than any other defendant in this case. Now [the] considering the amount involved and the importance of this case, it will be satisfactory to the court that some time when it agrees a memorandum may be submitted, we would like to have an opportunity to argue this orally to your honor. I want to say now in that connection that from the examination I have so far been able to make of the testimony heard by the Interstate Commerce Commission, on which this award was allowed, in the entire record there is not a scintilla of what is known to the law as the best evidence; there's not one word of evidence which would be known to the law as secondary evidence, and that this evidence at the most—and considering it in the most favorable light to the plaintiff, is that it's fourth, fifth or sixth hearsay, and hardly
360 sufficient to rise to the dignity of a rumor. Our position would be, had we the time to present this orally and an argument in support of it, that the finding of this Commission has no greater probative force, but would, perhaps, have equal probative force, with a finding of a jury under the practice of law in this state. Your honor is familiar with the rule that the appellate courts will not review the findings of fact by a jury if supported by sufficient evidence; but we expect to be able to demonstrate to your honor that not only was there no competent evidence admitted in this case, but

that giving it whatever probative force it might be entitled to, it is wholly insufficient to justify a court, or justify the Commission in making any finding in this case against the Missouri, Kansas & Texas Railway Company. We want further the opportunity to argue and demonstrate to your honor that it is wholly immaterial as far as concerns the disposition of this case here, whether or not any objection was ever made before the Interstate Commerce Commission as to the competency or the sufficiency of the evidence at the time of the hearing before the Commission; that it is for this court now, as an original proposition, to pass upon the question of the sufficiency and the competency of the evidence; otherwise, the Interstate Commerce Commission can, in any proceeding where it is acting in an administrative capacity, determine the competency of the evidence and the sufficiency of it, and regardless of all the rules of evidence. If that Commission, by a finding, can conclude the roads here and in this court to object to the sufficiency of the evidence, it will absolutely deprive the carriers of their property without due process of law, because in all the courts of this country, the rules of evidence that are applicable in courts, and that alone can be considered as sufficient, because it is only such evidence as that as constitutes due process of law. Now with this statement, if your honor please, when our written briefs and memorandum is ready to be submitted, will agree to permit an oral argument of it, we would be very glad to argue these questions orally. It is a matter of great importance, as I say involving some $65,000, and we believe that this court, when the matter is fully understood, will agree and have to hold that the record made before the Interstate Commerce Commission will absolutely destroy the case in so far as the findings of that Commission are supposed to be conclusive or persuasive as a prima facie made on behalf of the shippers in this case.

Mr. Cowan: If your honor please, in reply to that I wish to say that it is somewhat unfortunate that not an attorney representing the railroads here were ever in the original case; they never went through it; they are nearly all dead except myself and these gentlemen have been employed subsequently. There are ten thousand pages of printed record which Judge Baxter, the greatest Interstate Commerce lawyer of the United States, had printed and filed with the Commission. There was a carload of those records—an absolute carload—shipped out of the printing office in Washington. Subsequently, when the case again came before the Commission, and a decision was rendered in April, 1908, none of these gentlemen were present.

361

Mr. Norton: Mr. Cowan——

Mr. Cowan: Mr. Norton—only Mr. Norton was present at the hearing—Mr. Norton and Mr. Burg.

Mr. Norton: I think his comments are beside the case, in this, your honor. We are raising no objections about anything being introduced in that old case. We would not allow it to be introduced if we could [keep] it. The point is, it appears that these houses, that the commission houses, had the information—they had all the

information about those shipments—and it wasn't necessary to go back into the old case at all.

Mr. Cowan: Well, that's not correct. The evidence was offered before Judge Prouty in Chicago, and Mr. Williams, who is here, made up an abstract of claims every one of this abstract of claims were presented to the railroads and no claims except those they checked against their records were considered and we furnished that check to the Commission at Chicago; it showed just what shipments had been made——

The Court (interrupting): You have shown what the evidence was, introduced at the hearing, as I understand it—before the Commission.

Mr. Cowan: We will show that by the order and finding of the Commission.

The Court: Well, of course, you make a prima facie case thereby, which is subject to rebuttal.

Mr. Cowan: It has not been rebutted.

The Court: We do not know whether it has or not. If it is not founded upon what the law considers sufficient testimony to justify the findings, then, of course, the court can go behind it.

362 Mr. Cowan: Well, of course, we deny that the report that has been introduced by Mr. Norton contains all the testimony that was before the Commission. As is shown by the various decisions of the Commission introduced I say testimony had been taken for years in the case.

The Court: There will be nothing considered prior to the hearing which was the basis for the order of 1914; all those other hearings will not be considered by the court in the matter of reparation, except the fact that the rate was declared unreasonable and another rate was put into effect, and that's why the court entertained those other things, because there might be some bearing on them in there; but they can have no effect on the right of recovery—none whatever—except there might be what appears to be the difference in the two rates, but otherwise not.

Mr. Cowan: What I want to impress upon the court, if your honor please, was this point; that there was presented (for it is shown in the order which Judge Prouty entered, or the opinion rather), that the evidence respecting the shipments was presented, and that no allowance of any claims was made except that which the railroads had checked against their own records.

The Court: Well, the court will consider whatever is shown in that respect; the court has not made any finding on this matter. Of course, we could not confuse all the mass of testimony as to whether the rate was unreasonable, or whether the rate should have been put in, with the evidence bearing upon the question of reparation——

Mr. Norton: If your honor please, if there's any doubt about that, I will want to send for the records, showing that there was a new hearing.

Mr. Deatherage: As I understand the rule to be, your honor, the order of the Commission is prima facie evidence for the plaintiffs; the railroad companies have the right to show, if they can, that plain-

tiffs were not damaged. That's up to them. If they make no effort and make no offer of proof to show that we were not damaged, why then the order of the Commission being prima facie evidence, makes out the plaintiff's case. The law, perhaps, does not require the Interstate Commerce Commission to be as particular about the rules of evidence as would obtain in a court; but if the Commission had enough evidence before it by which it considered it was sufficient for them to make an order of reparation, that order being prima facie,
363 then it's up to the carriers to show that as a matter of fact, the shippers did not suffer the damage that they claim.

The Court: Well, I apprehend that the report and order of the Commission would be entitled, perhaps not so much, but at least to no more finality than the order of the postmaster general or the Commissioner of the Land Office, with respect to some matter before it or him rather, to decide in a quasi-judicial manner. The rule laid down by the supreme court was that—in the case of McAnulty vs. School of Magnetic Healing—the court may always go into that matter to the extent of finding whether there was any evidence of a substantial nature upon which the court could say, as a judicial matter, that such a finding could be made, and, if so, it should go no further. Now that's the rule in that case. I say I am not deciding that this sort of a hearing would be restricted to that, but even if it were, the court could go behind and find out whether the Commission had before it any evidence of a substantial nature, not merely a scintilla, but something of a substantial nature, to warrant a finding by any judicial body. Otherwise, the Interstate Commerce Commission could sit there and make any order which it wanted to, and the courts would be powerless to grant relief.

Mr. Deatherage: We do not claim that the law goes that far.

The Court: Of course, it isn't presumable, or thinkable that they would do — a thing as that, but they might.

Mr. Creason: If the court please, counsel for plaintiffs have been discussing the matter among themselves, and have decided that they have told the court all they know about this case, and are relying upon the findings of the Commission. Since the attorneys for the M. K. & T. have asked for an oral argument at the time of the submission of the briefs, we think that is not proper. We are not objecting to an oral argument if the court wants it, but we think whatever points they have, if they have not already been given to the court, should be prepared in writing and submitted to us, so that when we come to this argument, we may help enlighten the court, if there's any enlightenment to be had.

Mr. Jamison: We will submit briefs, say ten days in advance.

364 Mr. Creason: Well, we want to know what you have to say before the oral argument, if there is to be one.

Mr. Morrow: I now hand you, reduced to writing, the demurrer to the evidence.

The Court: The final demurrer to the evidence at the close of the whole case?

Mr. Morrow: There is a demurrer to the evidence at the end of plaintiff's case, and a peremptory at the end of all.

The Court: Of course this is all you can rely on now because you proceeded with your case;

Mr. Morrow: Yes, Sir!

Said demurrer now filed by defendants, being in words and figures as follows, to-wit:

In the District Court of the United States for the Western Division of the Western District of Missouri, November Term, 1915.

No. 4308.

E. B. SPILLER, Plaintiff,

vs.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY et al., Defendants.

At the close of all the evidence and upon the announcement of counsel for both sides, plaintiff and defendants, that both plaintiff and defendants rested, counsel for each and all of the defendants requested the Court to declare the law to be that upon all the evidence and all of the pleadings in the case plaintiff was not entitled to recover against any or all of the defendants.

In the District Court of the United States for the Western Division of the Western District of Missouri, November Term, 1915.

No. 4320.

E. B. SPILLER et al., Plaintiffs,

vs.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY et al., Defendants.

At the close of all the evidence and upon the announcement for both sides, plaintiffs and defendants, that both plaintiffs and defendants rested, counsel for each and all of the defendants requested the court to declare the law to be that upon all the evidence and all of the pleadings in the case, plaintiffs were not entitled to recover against any or all of the defendants.

365 Mr. Morrow: It occurred to me, your honor, that perhaps it might be well to have them indicate, referring to No. 4320, what claims, if any, were assigned to Spiller after the date of the order of the Commission.

The Court: Well, I suppose counsel—I judge probably that the secretary of the Association is here now and that can be done. It just simply sues as I take it, as a shipper.

Mr. Morrow: He does not clearly distinguish.

The Court: I understand that is a——

Mr. Morrow: May it please your honor, I think it ought to be specified by this kind of a statement.

The Court: Well, if it appears in the petition, it won't be necessary, but if it doesn't appear in the petition, I think that ought to be done, because the assumption——

Mr. Morrow: I think your honor ought to request them to do that.

Mr. Cowan: Those assignments, if your honor please, were made after the filing of the petition as I understand the rule of law——

The Court: Well, now, they couldn't be made after the filing of the case.

Mr. Deatherage: No they were made after the order, not after the filing of the petition.

Mr. Cowan: They were filed—they were made, your honor, after the filing of the order. We can file those assignments if that is desired.

The Court: You can do what?

Mr. Cowan: We can file the assignments, if that is desired.

The Court: I don't think there's any requirement for the filing of the assignments, but merely a showing as to what claims were involved. That can be done by a mere statement being made by counsel and filed in the case as part of the case.

Mr. Creason: The report shows that wherever an S appears the assignmen's were made to Spiller.

The Court: Of course I understand that, but that's a thing that took place prior to the filing of the report. Now there were certain of these assignments made after the award and consequently there is raised there, as there was in Mr. Cowan's statement, in the court of the proceedings before Judge Prouty, the question of whether
366 this is in an assignment in substance of a cause of action, or whether it is an assignment merely for the purpose of bringing suit. That gets us back to the argument in the case before Judge Shiras, and also in the Traer case before the supreme court judges. It's a matter for counsel to brief and consider carefully.

Mr. Creason: So we may know exactly what we are to do——

Mr. Morrow: Indicate what claims were assigned after the order.

Mr. Deatherage: Against the Atchison, Topeka & Santa Fe, we set out certain claims, amount agreed upon, etc:, and all of the above claims have been assigned by the said parties to E. B. Spiller since the date of the order of the Commission, and then there were a lot of the claims that were not assigned. Against the Rock Island are set forth three claims, and say "All of the said three claims have been assigned to E. B. Spiller since the filing of the order," and so it goes on all through the petition.

The Court: That will cover that then by reference to the report. Now I would like to ask you gentlemen what time you think you will need for the preparation of your briefs, not only upon the law, but your suggestions upon the record. Of course, this is to be kept in mind that counsel for the defendants in this case—the position of the plaintiffs, I think, is sufficiently clear so that the burden would lie here now upon counsel for the defendants—that their briefs should

be prepared and copies served upon the plaintiffs and plaintiffs should have a reasonable time thereafter in which to reply and make such counter-suggestions as they should desire. We will take that matter up first and ascertain what is thought.

Mr. Norton: Of course, we will want this record by the stenographer written out and that will take a day or so, and I think we ought to have—in order to save labor in the end—we ought to have thirty days.

Mr. Morrow: I might say in that connection that your honor may know something of our position; we railroad lawyers to-day are just absolutely crowded and overwhelmed and so are the courts; but—for instance I have to leave tonight to take care of another railroad matter and be gone several days. I suppose we may have thirty days after we get the testimony.

The Court: How much time do you think you gentlemen will require after you have received this?

Mr. Deatherage: Oh, I think fifteen or twenty days would be enough for us. I can't tell just now, because I don't know
367 what our engagements will be, but I think twenty days will be enough for us.

The Court: Very well. Now then this is the 8th. Well, that would be until the——

Mr. Morrow: Let's assume that we will get the testimony by next Tuesday.

The Court: Yes; I will guarantee that Mrs. Snyder will have it to you by that time. That will bring it, say, to the 8th of January. And that would bring it up to about then—to something like the 28th of January.

Mr. Morrow: Yes, and I suppose we ought to be allowed to answer their brief.

The Court: Well, that's pretty liberal time; I think you can make what answer you want to in the argument.

Mr. Morrow: Well, now, how about an oral argument?

The Court: Well, now, I am coming to that. That would be the 28th, which is Friday. Suppose we set that down for that Friday, and if more time than that day is needed, we can run into the next day, though I don't anticipate more time than that will be needed. I haven't counted the days exactly, but I have just jumped from the 8th to the 8th, which is really twenty-nine days, and then I gave from that day to the 28th, which makes the twenty days, and I concluded that on that day because it was Friday and not going into the next week—we might take that Friday. I should think we ought to be able to argue this matter pretty well in one day.

Mr. Norton: The difficulty there would be if they file their briefs on the 28th, and we argue it then, we will not have read them.

The Court: Well, as far as that is concerned, we can make that the first of February, and give you time to look over their briefs. Make the oral argument then the first day of February, which will be Tuesday, February 1, 1916, and I trust you gentlemen will get it in shape so that it can be presented as succinctly as possibly with-

out disadvantage to the presentation, because I shall be pretty busy with the docket at that time.

368 Thereupon the objections raised by the defendants — the introduction by the plaintiff of the original decision of August 16, 1905, of the Interstate Commerce Commission in case No. 732 the decision of the Commission in said case dated April 14, 1908, after a hearing on reopening thereof, and the further decision of the Commission in said case on July 6, 1908, all of which related to the reduction of the rate and not to the subject of reparation, were by the court sustained, and the said Exhibits 2, 3 and 4 of the plaintiff, which were received by the Court under reserved ruling, were ordered stricken from the record.

(*Certificate of Judge to Bill of Exceptions.*)

The above and foregoing constitutes all the testimony, statements, proceedings, evidence introduced and offered upon the trial of said causes, together with all objections, rulings and exceptions, demurrers to the evidence, declarations of law asked, and all other proceedings on the trial.

Thereupon, on the 2nd day of September, 1916, the said defendants presented to the Court the foregoing as its and their bill of exceptions in said causes, and prayed the court to allow and sign the same, and order that said bill of exceptions be made a part of the record in said causes, all of which is done and ordered as said defendants prayed.

Said bill of exceptions is therefore now allowed and signed by the Court, and ordered to be filed and made a part of the record, this 2nd day of September, 1916.

ARBA S. VAN VALKENBURGH, *Judge.*

In the District Court of the United States for the Western Division of the Western District of Missouri.

No. 4308.

E. B. SPILLER, Plaintiff,

vs.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY et al., Defendants.

Stipulation for One Transcript of Record.

(Filed in the District Court on September 2, 1916.)

Whereas, on the 16th day of August, 1916, in the above entitled cause judgments were entered in this court in favor of plaintiff and against each of the defendants as follows:

369 The Atchison, Topeka and Sante Fe Railway Compa

Principal	$38,292
Interest	4,882
Attorney's fee	4,317
Total	$47,491

Chicago and Eastern Illinois Railway Company:

Principal	$1,830
Interest	232
[Attorn-*sy*'] fee	206
Total	$2,269

Chicago and Alton Railroad Company:

Principal	$762.
Interest	97.
Attorneys' fee	85.
Total	$945.

Missouri Pacific Railway Company:

Principal	$310.
Interest	39.
Attorneys' fee	35.
Total	$385.

St. Louis, Iron Mountain and Southern Railway Company:

Principal	$3,694.
Interest	471.
Attorneys' fee	416.
Total	$4,582.

St. Louis and San Francisco Railroad Company:

Principal	$27,682.
Interest	2,529.
Attorneys' fee	3,021.
Total	$33,233.

Chicago, Rock Island and Pacific Railway Company:

Principal	$18,039.97
Interest	2,300.08
Attorneys' fee	2,034.00
Total	$22,373.05

370 Illinois Central Railroad Company:

Principal	$1,586.18
Interest	202.23
Attorneys' fee	178.84
Total	$1,967.25

Missouri, Kansas and Texas Railway Company:

Principal	$54,779.91
Interest	6,984.43
Attorneys' fee	6,176.43
Total	$67,940.77

And Whereas, the pleadings, issues, testimony, bills of exceptions, record and proceedings in this court are practically the same with respect to each of the defendants; and

Whereas, a separate writ of error has been prosecuted by each of said defendants from the United States Circuit Court of Appeals of the Eighth Circuit to the judgment rendered against it by this court; and

Whereas, the assignments of errors filed by each of the defendants herein are practically the same;

Now, Therefore, to save the unnecessary expense and labor which would be incurred in the preparation of a complete transcript of the record and evidence as to each of said defendants in this cause, it is hereby stipulated and agreed between the parties hereto that only one complete transcript of the record shall be prepared and forwarded by the Clerk of the District Court to the United States Circuit Court of Appeals for the Eighth Circuit, namely, the transcript of record as to The Atchison, Topeka and Santa Fe Railway Company, in which said transcript shall be included the separate petitions for writs of error, and the writs of error of each of the defendants allowed by the courts herein, the separate assignments of error filed by each defendant, and separate citations and bonds; that said single transcript of record of The Atchison, Topeka and Santa Fe Railway Company shall be taken and regarded in said Circuit Court of Appeals as a complete transcript of the record and proceedings in the above entitled cause as to each of said defendants with the same effect as if a separate and complete transcript of record had been prepared and certified in this cause by the Clerk of the Dis-

371 trict Court as to each defendant; and that for the purpose of hearing and adjudication in the Circuit Court of Appeals only the transcript of the said defendant, The Atchison, Topeka and Santa Fe Railway Company need be printed by the Clerk of said Circuit Court of Appeals.

S. H. COWAN,
I. H. BURNEY,
B. F. DEATHERAGE,
GOODWIN CREASON,
Attorneys for Plaintiff.
THOMAS R. MORROW,
J. W. JAMISON,
C. S. BURG,
ROBERT DUNLAP,
T. J. MORTON,
Attorneys for Defendants.

(*Election as to Printing of Record. Filed in the District Court on September* 2, 1916.)

To John B. Warner, Clerk District Court:

The defendants in this cause hereby elect to have the record printed by the Clerk of the United States Court of Appeals at St. Louis.

THOMAS R. MORROW,
C. S. BURG,
T. J. NORTON,
Attorneys for Defendants.

(*Praecipe for Transcript on Writs of Error.*)

To the Clerk of the Above Entitled Court:

You will please prepare a transcript of the record in this cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, under the writs of error heretofore allowed by said court, and under the stipulation of the parties filed in this court, and include in said transcript the following pleadings, proceedings and papers on file:

1. The petition of the plaintiff filed December 29, 1914, omitting Exhibit "A" thereto.

2. The answer of The Atchison, Topeka and Santa Fe Railway Company, filed April 26, 1915.

372 3. The record entry of September 18, 1915, allowing said defendant to withdraw its answer, and giving it ten days within which to file demurrer.

4. The record entry and the demurrer of The Atchison, Topeka and Santa Fe Railway Company of September 28, 1915.

5. The record entry of December 7, 1915, showing that plaintiff dismissed as to the second count of the petition; also that plaintiff

dismisses as to the defendant the Texas & Pacific Railroad Company; also that the demurrers were overruled by the court.

5a. Copy of opinion of trial Judge on demurrer.

6. Separate answer of The Atchison, Topeka and Santa Fe Railway Company filed December 7, 1915.

7. Replication of Plaintiff to Answer of A. T. & S. Fe Ry. Co.

8. Stipulation waiving jury, filed December 7, 1915.

9. Bill of exceptions.

10. Record entry of December 8, 1915.

11. Record entry of February 8, 1916.

12. Record entry of July 28, 1916; also opinion of court.

13. Judgment entered as to each defendant, on August 16, 1916.

14. Petition for writ of error of each defendant.

15. Assignment of errors of each defendant.

16. Order of August 28, 1916, allowing to The Atchison, Topeka and Santa Fe Railway Company writ of error, fixing bond and staying proceedings.

17. Bonds of all defendants.

18. Stipulation for one transcript of record.

19. Writ of error as to each defendant.

20. Citation as to each defendant.

21. Election to print the record.

373 22 Copy of Opinion of trial Judge on the merits.

23. Copy of this praecipe.

THOMAS R. MORROW,
ROBERT DUNLAP,
T. J. NORTON,
Attorneys for The Atchison, Topeka and Santa Fe Railway Company.
C. S. BURG,
J. W. JAMISON,
Attorneys for Defendant Missouri, Kansas and Texas Railway Company.
C. S. BURG,
T. J. NORTON,
Attorneys for All Defendants.

Received copy this 2nd September 1916.

B. F. DEATHERAGE,
Atty. for Plff.

Opinion on Demurrer.

The Court: Gentlemen, I have arrived at a conclusion in this matter, not without some hesitation and not without recognizing that there are very serious questions involved. Some, however, have been entirely foreclosed by the procedure that has arisen and by the decision, I think, in the way of acceptance and acquiescence if not of precise determination by having a specific point called to their attention, by the Supreme Court of the United States. So that whatever I might feel with respect to the question that arose yester-

day as to what the law contemplated with respect to the legality of the rate and within what time, if any time, a recovery might begin to lie, I do not feel that that is any longer an open question in the present stage of the decisions, and even if the Supreme Court of the United States, upon having the matter specifically drawn to its attention, might rule in a way that would seem to be at variance with what it has recognized heretofore, I do not feel at liberty at the threshold of litigation to assert such a proposition, even though I might entertain it, in such apparent divergence from what I conceive to be the ruling of that court.

The main question that is involved here is whether this right of action is assignable, and, if so, whether the assignee of such a cause of action may bring suit.

374 In order to arrive at this matter or at least, in order to begin at getting at it, the first consideration is when the cause of action accrued.

It was conceded yesterday that the Interstate Commerce Commission had ruled consistently that it began upon the payment of what were ultimately determined to be the unreasonable freight charges. Of course that has been expressly decided by the supreme court, and in so deciding some very pertinent language, to my mind, is used.

In the case of Phillips vs. The Grand Trunk Railway, 236 U. S., beginning on page 665, the court says:

"But while every person who had paid the rate could take advantage of the finding that the advance was unreasonable, he was obliged to assert his claim within the time fixed by law. When the overcharge was collected a cause of action at once arose, and the shipper at once had the right to file a complaint, or to intervene in proceedings instituted by others. If he had failed to take either of those steps, and there was a finding of unreasonableness in the proceedings begun by others, he could, if in time, present his claim, and await the result of the litigation over the validity of any order made at the instance of those parties. If it was ultimately sustained by the court as valid, he would then be in position to obtain reparation from the Commission—or a judgment from a court of competent jurisdiction, on a claim that had been seasonably presented. But neither proceedings begun by other shippers, nor findings of unreasonableness and orders issued thereon by the Commission, would save the rights of those who disregarded the requirements of the Hepburn Amendment."

Then proceeding to say "that all complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the circuit court within one year from the date of the order, and not after, provided that claims accrued prior to the passage of this act may be presented within one year."

Now this holds expressly that the cause of action arises when the overcharge was collected, and it holds also that any party then by taking the steps prescribed by the statute may seek and obtain reparation. So that that sets at rest any question of whether a recovery

can be had for a period antedating the order of the Commission, and it also sets the time of the accruing of the cause of action
375 and what the effect of that cause of action is. It is the recovery of such overcharges as a right, a property right, to the claimant arising out of the imposition of these unreasonable charges.

Now that is a claim for damages arising out of tort, but affecting the property and not the person. Such actions uniformly survive the death of the claimant and are assignable. There cannot be any question about that.

Speaking now from the standpoint of the law in general, that was a cause of action which arose out of and affected the property of each claimant and shipper and such a cause of action is one which survives the death of the claimant, becomes a part of his estate, and is necessarily assignable in its general nature.

One of the earliest cases on this, and the leading case which is still referred to, is the famous case of Comegys vs. Vasse, the Spanish Claims case, in which the supreme court says this:

"In general, it may be assigned that mere personal torts which die with the party and do not survive to his personal representatives, are incapable of passing by assignment, but that vested rights ad rem and in re possibilities coupled with an interest and claim growing out of and inhering to property, will pass by assignment."

Now this sort of a claim falls expressly and exactly within the definition laid down by the supreme court. That is also again announced in Irwin vs. United States, 97 U. S., Page 396, and is the ruling of Judge Shiras in the case of Edmunds vs. The Illinois Central Railroad Company, 80 Fed., Page 78, which has been so much in discussion.

The decisions in the Texas & Pacific Railway Company vs. The Abilene Cotton Oil Company, 204 U. S., and Pennsylvania Railroad Company vs. Coal Company, 230 U. S., and other cases referred to lay down the rule, which is obvious, that the Congress here has entered a field in a matter within its jurisdiction and has taken hold of that field to the exclusion of all other jurisdictions, and that this right, whatever it may be, is a right which arises out of the statute itself, and we are to determine what those rights are and what the remedies are therein from the language of that statute. There is not any question at all about that. But the next question is, what does that mean?

It is contended here by the defendants that in the Parsons case in 167 U. S., the holding necessarily is, as also in some of the other cases to which reference has been made, I think notably the
376 case of Pennsylvania Railroad Company vs. Coal Company, that the right is given to the party injured, or some injury to his property, and that, therefore, it is personal to him and cannot be assigned and cannot be pursued by another party.

I do not think that this is necessary, nor, in fact, the proper implication in those cases. Take the Parsons case, for instance, the right of the plaintiff in that case was denied, not because he was a stranger to the transportation, because whatever transportation he relied upon he was party to, but there was no right of action dis-

closed in him under the facts and circumstances in that case. In other words, to illustrate, if he had assigned his claim and the assignee had sought to maintain it and to recover, that assignee would have been defeated under the reasoning of the Parsons case not because he was an assignee, but because his assignor had no claim. Nobody had any claim as disclosed by the facts and circumstances of that case.

Here we have a case where the assignors, if they took proper steps, had the claims, subsisting claims, claims not for penalties but for compensation, for money they had paid out, necessarily been compelled to pay out in discharging an unreasonable freight rate, and the reasoning of the Parsons case in my opinion does not apply there.

Now the rule, as I say, of those cases, demonstrates that this is a purely statutory cause of action, but it does not follow that statutory causes of action, because they are such, unless the statute expressly prohibits an assignment or unless such is the necesary intent of its terms, may not, as well as any other claims, be prosecuted in the name of or as a right by an assignee.

I think this volume of Cyc. lays down the doctrine very well in that respect and in a manner that is upheld by the cases generally. This is under the head statutory rights:

"There is nothing peculiar to rights conferred upon one by statute that in itself forbids the assignment of such rights. As to such rights, it may be said that the assignability or non-assignability of them depends in each case upon the language of the statute conferring the rights. If the statute forbids the assignment of the right conferred by it, or if the legislative intent, as shown by the act, is to confer a right strictly personal to the person upon whom it is conferred, then such a right is not assignable. In the absence of such express or implied prohibition, the assignability or non-
377 assignability of rights conferred by statute is to be governed by the principles governing the assignability or non-assignability of choses in action in general. Statutory rights giving compensation for property loss suffered are, generally, said to be assignable, whereas rights to recover penalties and rights given by statute for the redress of personal wrongs are not assignable."

To the same effect as illustrating that, however, is a case I find in 32 Hun. at Page 147, the case of Stoothoff vs. Long Island Railroad Company. There,

"Section 4 of Chapter 609 of 1871 requires a railway corporation operating a railway by steam power to station a flagman at all places where the railway crosses a public highway on the grade thereof, when required to do so by the supervisor and highway commissioners of the town. In case the company neglects to station flagmen at such crossings the highway commissioners are required to appoint them, and the wages of such flagmen 'not exceeding $3 per day' are to be recovered from the company in an action brought by the supervisor, or a successor in office, or by such flagman, in any court of this state."

Held in this case that an assignee was competent to bring suit, and while that may be viewed as an action arising from a contract

for services and not a right of an action in tort, of course, that does not alter the proposition of the construction of statutes as to the parties in whose name a suit may be brought, when we concede, and must concede, that torts affecting property rights are assignable as well as rights arising under contract.

The question then is, does the nature of this statute or its spirit restrict the recovery to the shipper himself? Of course, it is not unnatural that the law should use terms applicable to those who might naturally be expected to be the parties complainant. They would be the shippers, they would be the parties interested, and, of course, any redress or reparation that was to be granted and made must depend upon some connection with the transportation and must depend upon some injury resulting from such transportation.

But there are no words in that act that expressly restrict the parties plaintiff to the actual shipper or the party to the transportation himself. I mean in such way as to exclude any assignment. I cannot see that this law was not intended merely, as was said in the Phillips case, to vest such a shipper who has paid an unreasonable rate an immediate cause of action based upon a property
378 right conferred by that statute. And suppose he died the next day, is it to be said that his estate would be without remedy to recover that which might amount to a very large sum of money? Suppose he died before the possibility of filing any claim or taking any steps for the preservation of his rights before the Interstate Commerce Commission. I do not think that anybody will say that that subsisting right would not remain. Now, if that is true, why could he not make an assignment of any such right as he had, unless the language expressly forbids it, which I think it does not.

I am speaking now of the spirit of the statute.

Judge Sanborn said in a case—I have forgotten the title of it, in
137—not on this statute, but an assignment in many cases, that a party in the course of litigation or in prospect of litigation in order to get funds with which to prosecute a claim might find it necessary to make some assignment in order to preserve his rights at all, not being in funds with which to prosecute that claim.

We have to consider as bearing upon this the rulings in the case of the employers' liability statute. I think of that particularly because that was referred to especially in argument as analogous. It seems to me it will occur to us at once that there is no very important distinction between those two statutes which goes to the very question of assignability and non-assignability. The employers' liability statute deals with special injuries, injuries to the person, and under the common law and in general those are not assignable, and they are not assignable yet unless expressly made so by statute. They do not survive unless expressly made to survive by statute. That is one of the kinds of torts which, in the absence of some saving clause in the act itself or under the general law, do not survive and in which the right to recover is restricted to the language of the act.

Mr. Norton: They do survive under the present employers' liability law.

The Court: They do survive under it, but with the provision as

to how they shall be collected, how the suit shall be brought. But I am getting at the underlying inherent nature of the liability, which is one that would not ordinarily survive and, therefore, nearly all of our statutes, our state statutes and all, make some provision as to what is to be done in case of death, who can recover, and who is entitled to bring suit. Right of action, therefore, is specifically named.

In any event, I do not think that the statute is sufficiently analogous to govern a case like this, and I do not think that
379 we can overlook the underlying cause of action, subsisting cause of action as to property distinct from the person, which, in my opinion, does survive and which may be assigned.

In reaching this conclusion I have taken into consideration the principle invoked by counsel, of which I am keenly sensitive, that this statute should not be interpreted from the standpoint merely of expediency. That, however, cuts both ways. We construe the statute as its language seems to impel us to construe it, or as we feel that we must, independently of whatever incidental inconveniences or, perhaps, even vices, may lurk in it. I can see on one side that where a claim is very small, comparatively small, its prosecution by that party could not justify the time and expense, to say nothing of the costs that would be involved. It is true that provision is made for the collection of costs and of attorneys' fees, and that is supposed to be sufficient to reimburse the party plaintiff and to be sufficient deterrent to the party defendant to prevent its unnecessarily and wilfully refusing payment, but nevertheless we know that it would be perfectly prohibitive in all very small claims to collect them by themselves. However, as I say, that would not govern me at all in arriving at this conclusion. On the other hand, I can see that it does open a field for speculation and perhaps for the withdrawal of the possibilities of compromise and adjustment at small expense, and that is deplorable but cannot govern, I think, what to my mind is plainly the necessary construction of the statute. If there are such evils as that arising from this statute, and which become sufficiently prominent to challenge widespread attention, Congress should and probably would make its purpose, if it has such a purpose, of prohibiting the assignment of these claims sufficiently clear and certain in some legislation that it might enact.

With respect to the matter of joinder, I had felt from what was said here yesterday and from the attitude of the parties that inasmuch as there are different cases pending against these individual railroads and inasmuch as those matters are ready for final adjustment upon the ruling on the demurrer, that this should not be of any great importance—I mean practically. There is no dispute, and could not be any debate, on the proposition that if these cases came here as ordinary cases under our State Practice Act, or any State or Federal Practic Act that I know of, that the demurrers would have to be sustained without argument. But I feel, the more I have read
380 this section 16, that I cannot be governed by any such considerations in disposing of these particular questions.

"In such suits all parties in whose favor the Commission may have

made an award for [damaged] by a sigle order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit tho recovery, if any, may be judgment in favor of any one of such plaintiffs against the defendant found to be liable to such plaintiff."

I think the purpose is sufficiently clear here that where there is a hearing before the Interstate Commerce Commission in which there are a number of parties plaintiff and defendant, a number of railroads, carriers, brought in as those complained of because of the rate, and the complainants in which, whether it be one, or more at the outset, but all who are entitled to come in under that, if they do so at the proper time, are in a sense parties to the case, and where that is considered by the Interstate Commerce Commission and one general order made, and in which the matters before it are disposed of, that that is a single order and, of course, it makes its findings and awards to this one and that one against this one and against that one, but it is all one order and these other matters are but the incidents of it, and that all such parties may be made plaintiffs on the one side and defendants on the other side.

Now the last division shows that that is what is intended because it specifies that the judgment may be in favor of any plaintiff as against the defendant found to be liable to such plaintiff and, of course, in such case there is no recovery and can be no recovery where no cause of action either upon the award of the Commission or by the findings in court afterwards exists.

I believe that it was the intention of this Act to dispose of this matter in its entirety in much the same manner as that in which it appeared and was before the Interstate Commerce Commission.

Of course it is anomalous and we can find all sorts of decisions
381 and rules, and hardly need invoke any, against it as a matter of pleading as commonly known. But nevertheless there is no reason why Congress may not so legislate, if it chooses, that I can see, and in my opinion it has done so. So I believe that we need not be troubled about the question of joinder.

As to the matter of limitations, it is clearly disclosed from all the federal cases to which reference has been made that it is the federal act and not any local act of limitation that governs, and here there has been a recital of the ultimate fact that the claims were filed in time. There is no dispute but that the suits [was] filed in time after the award.

Of course the Interstate Commerce Commission by merely finding that the claims were filed in time could not foreclose any party from testing the truth of that finding in court as it would any other finding of fact, whether order or otherwise, of the Interstate Commerce Com-

mission. If I should say that the claims were not so filed, such as were not so filed would have to be thrown out on the hearing of this case. But, nevertheless, as it stands and as I intimated yesterday I think that is a matter that the court can get at, if at all, upon the hearing of the case and not upon demurrer in the state of the record.

Of course, with respect to the rulings of the Interstate Commerce Commission on the subject of whom it would take into consideration at the hearing, well, it has ruled that it would not consider or hear any stranger to the transportation. Of course, if this cause of action is assignable as I have said, then the assignee is not a stranger to the transportation in the sense in which that ruling was made, but whatever may be the interpretation to be placed upon that, the Commission through its representative at a valid hearing has held otherwise, at least by its action, in this case, and no matter what the holding or what the rule adopted by the Commission as a whole or in part might be, the court of course could not be bound by that in its interpretation of what appears to be the clear language of the statute. It follows from this that the demurrers will be overruled.

As to the motion to quash in the case of the Texas & Pacific Railway Company, that motion must be sustained. The case is covered in my opinion by Green vs. The Burlington, 205 U. S. The Estill case in 140 U. S., to which reference has been made, is one which I was familiar with, although I did not recognize it from its title when it was spoken of yesterday, but it will be observed that in that case the contention brought before the supreme court was not
382 so much whether the defendant could be served and sued in Missouri, but whether he could be sued in Saline County under the provision of our statute that enables a non-resident corporation to be sued in any county in the state. That was the contention. The defendant Estill asserted that he ought to be sued in St. Louis, and it was practically conceded that he was doing business in the state but at St. Louis, not in Saline County, and not having any line of railroad in Saline County he claimed that he had no right to be sued there.

That is not the question here. The question is, as counsel stated in their brief, where is this defendant found? Now being a corporation it can be found only in a state where it is incorporated or where it is doing business within the purview of the law sufficiently to make it a resident in that sense for purposes of service merely.

And in the reasoning in the Green case it is shown that it is not doing business in that sense in this state. And I think that being so, of course, we need not concern ourselves with what the Missouri law provides with respect to service upon a foreign corporation, because this Act provides what that service shall be when the party is not found, that is, is not a resident or is not doing business in the State, and that is in any place where it has its principal office. And, of course, if the *the* court is right in its ruling upon the misjoinder it can be served in the proper jurisdiction.

I believe that is all. I have merely informally attempted to give counsel my reasons for the conclusions which I reached.

In the District Court of the United States for the Western Division of the Western District of Missouri.

No. 4308.

E. B. SPILLER, Complainant,

vs.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY et al., Defendants.

No. 4320.

E. B. SPILLER et al., Complainants,

vs.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY et al., Defendants

Memorandum on Final Hearing.

This is a suit brought under Section 16 of the Interstate Commerce Act, as amended, to recover an award for reparation made by the Interstate Commerce Commission in favor of complainants and against the defendants, aggregating, with interest, $147,-
383 851.35. The apportionment between the several defendants appears from the award of the commission, and is not in controversy as to amount, except that some minor corrections were made in the progress of the trial which need not be dwelt upon here. The plaintiff Spiller is secretary of the Cattle Raisers Association of Texas, and brings this suit as assignee of the claims represented by him. The other plaintiffs sue in their own right. The joinder is made under the provisions of Section 16 aforesaid.

Two of the main contentions made by defendants are: (1) That there is a misjoinder of parties plaintiff and defendant, and (2) An award of damages to an assignee is void. And as corollary to the latter that

"The Interstate Commerce Commission erred in entertaining jurisdiction of assigned claims against the carriers when it appeared that no shipper paying the rates complained of had filed a claim for reparation with the commission within the two-year limitation of the act".

These two defenses were presented by demurrer and I adhere to my ruling made thereon, and to the reasoning expressed orally at the time. I am not insensible of the fact that a new, and, perhaps, serious question is involved, but I find nothing either in logic or policy which forbids the practice here adopted. The act is remedial in its nature, and should be so construed as best to effectuate the purposes for which it was enacted. It follows also that no bar by limitation is presented.

Practically all other matters of defense are embraced within the contention that the order of the commission awarding reparation

was invalid because unsupported by sufficient evidence before that body. Prominent among such defenses are: (1) That the assignments to Spiller were not proved. (2) That there was no proof of damage to be repaired.

It cannot be denied that the proof produced before the commission was not of that quality which would ordinarily meet the requirements of the rules prevailing in trials at common law. The commissioner was sensible of this as the hearing proceeded, and there is to be found in the record of that hearing much discussion between the commissioner and counsel as to what form the proofs should take to sustain an order of reparation. From this discussion, and the views therein expressed, counsel have built up a very plausible argument as to the insufficiency of the record, particularly
384 as addressed to one grounded in the requirements of proceedings in courts of record. However, we must not lose sight of the fact that "the commission is an administrative body and even where it acts in a quasi-judicial capacity, is is not limited by the strict rules as to the admissibility of evidence which prevail in suits between private parties", nor "by those narrow rules which prevail in trials at common law where a strict correspondence is required between allegation and proof".

(Interstate Commerce Commission vs. Louis. & Nash. R. R., 227 U. S. 1. c. 93; Interstate Commerce Commission vs. Baird, 194 U. S. 1. c. 44).

The commissioner, himself a trained lawyer, after reviewing the record as made, was of opinion, that the evidence sustained the findings he made, and after a very critical examination, and that deliberate consideration made necessary by the earnest insistence of counsel, I am constrained to agree with the commissioner.

First, as to the matter of the assignments made: The fact of the assignments was stated by Mr. Williams, the Assistant Secretary of the Cattle Raisers Association of Texas. He had the assignments with him, and exhibited one of them at the request of the commission and it was read into the record. The others were present and were tendered. They were very numerous, and were all in the same form. The separate offer and establishment of each assignment would have taken a great deal of time. It was apparently and naturally desired by all parties to expedite the hearing and save unnecessary labor. The commissioner said:

"Now, of course, there is no proof here that the assignments have been executed by the persons who purport to execute them, but I take it, gentlemen of the defense, it would not be your desire to put Mr. Cowan to the necessity of making proof in each individual case. There is no doubt about it, I suppose, and we will find, unless there is some objection, that this assignment was regularly made by the person purporting to execute it".

And again:

"I don't think you need to go into that; unless these is some objection we will find the fact of the assignment according to the language of the assignment itself in all these cases where an assignment has been made, and you indicate in whose favor the order should be made in all cases".

No objection was recorded to these suggestions of the commissioner. On the contrary, the examination by Mr. Humburg,
385 of counsel for the defense, at page 103 of the record before the commission, discloses acquiesence in the suggested abridgment of the formal proofs. Such things are common in courts of law in the interest of economy of time and labor, and still more so in more informal proceedings before commissions. It is true that at the end of the hearing the defendants interposed objections as to the sufficiency of the proof, but after such an attitude assumed in the course of trial, courts generally would not entertain such an objection as reaching an offer of this kind, proposed for convenience and acquiesced in by counsel at the earlier stage of the proceedings. It is quite apparent that counsel for defendants were at that time laying greater stress upon the non-assignability of the claims than they were upon the forms of the assignments made. The record, as a whole, but further strengthens the conclusion reached. The commission was not without evidence upon which to find that there were valid assignments of the claims sued on, made by the parties in interest, ultimately to the plaintiff Spiller.

Now, with respect to proof of damage to be repaired, I am mindful of the rule laid down by the Supreme Court that the rate order must be held invalid unless it was founded upon substantial evidence; but in accordance with the recognized practice before administrative officers and bodies exercising quasi-judicial powers and in conformity with the views of the Supreme Court of the United States as expressed, notably in the case of Louisville & Nashville R. R. Co. vs. Finn, et al., 235 U. S. 601, I am of opinion, that there was substantial evidence to support the order in this respect. There is a wide distinction between cases of damages caused by discrimination and those involving unreasonable rates. In the former cases, no actionable damages may appear at all as to a particular complainant, and where they do exist may be equal to, or greater, or less, than the difference between the rates involved, depending largely upon injury to business, loss of profits, and the like. In all cases, therefore, they must be expressly proved as suffered by the claimant, and so the commission itself, as also the courts, have consistently held; but where one has shipped under a rate declared to be unreasonable, and a reasonable rate has been ordered into effect, then it is incumbent upon the shipper who paid the higher rate only to show shipments, the amounts paid at that higher rate, and the difference between the amounts paid and the amount held to be reasonable; and the measure of injury or actionable damage is the difference between the rate condemned and the rate held to be reasonable.

386 (Louisville & Nashville R. R. Co. vs. Finn, 235 U. S. 601;
Meeker vs. Lehigh Valley R. R. Co., 236 U. S. 412;
Mills vs. Lehigh Valley R. R. Co., 238 U. S. 473.)

The party to the transaction who was compelled to pay the higher unreasonable rate is damaged to that extent irrespective of any question of profits. Now, it conclusively appears, from the state-

ments offered by complainants, and, to that extent, approved by defendants, that all the shipments included in the order of reparation moved, as charged, and that the freight was paid, as charged, at the higher rate. The rate fixed by the commission was established as confirmed upon appeal. The difference was a mere matter of computation. The case presented is, that, as to these amounts, the railroads owed reparation to some one, if the proper steps were taken, and that some one was sufficiently identified as claimant in this proceeding. It remains to consider, therefore, whether there was failure of proof in this latter respect. It was stated by counsel for plaintiffs in his opening, and his statements were confirmed by Mr. Williams, the Assistant Secretary of the Cattle Raisers Association, that these statements of the shippers and real owners were procured and made up from the books and records of the commission men, at point of destination, to whom the shipments were made. These commission companies sell the cattle and make up an account of sales so-called, transmitting to the shipper, the owner, the proceeds, after deducting out of the proceeds the amount of freight, feed charges, and other charges of that character. These commission companies make their settlements with the real owners, or parties in interest, irrespective of the care-taker, or other person in whose name the shipment may nominally be made; such are the ones whose names appear in the statements offered, and from whom the assignments were procured. These assignments, as shown by the sample, are absolute on their face and import a valuable consideration. A careful reading of the record discloses that plaintiffs offered to prove this general situation by a witness, or witnesses, from among the commission men, but the commissioner, deeming the matter already to have been sufficiently shown, for the purposes of a prima facie case, declared further proof to be unnecessary. Nothing to the contrary was shown, nor offered to be shown, by the defense. On the contrary, the entire record discloses an acquiescence on the part of the defense upon this asserted course of business dealing, as well as, in some cases, statements amounting to admissions. The following, among others, will serve as an illustra-

387 tion:

"Mr. Cowan: * * * Now, I ask the attorneys of the railroads, as they probably now know, whether it is a fact that in all cases the freight was paid by the commission company and deducted out of the account sales of the cattle, as I have stated. I presume all you gentlemen know that to be the case. Is that right, Mr. Wood?

"Mr. Wood: I do not know anything about it, except what you say about it, Judge.

"Mr. Cowan: I would like to call Moore, who has spent many years in the commission business. He has kept the books of this firm of Evans-Snider & Buel, and he has the books here, so as to explain for the purpose of the record and for the information of the commissioner just what the course of proceeding is.

"Mr. Norton: I think that was stated in the other hearing. I think our own livestock man stated that.

"Mr. Cowan: I think he did.

"Mr. Norton: We are anxious to get to another meeting, and you can put that in, if necessary, later."

It is true that there was much talk of having the books and bookkeepers of the [variour] commission companies examined and reported on by an examiner to be appointed by the commission. It is true that the defendants insisted that this would be the best evidence, at least evidentiary in its character, but the commissioner felt that upon the entire record the situation sufficiently appeared in the absence of rebuttal, and so I think it did for the purposes of a hearing of this nature.

Counsel for defendants contend that the burden was upon the complainants to prove their case by the best evidence accessible, and that if the report and order of reparation be accepted as prima facie evidence in this court, based, as it is, upon a record deemed to be insufficient, it will amount to a denial of due process of law; but, as decided by the Supreme Court, the statutory provision merely established a rule of evidence. It leaves every opportunity to the defendant to contest the claim. The defendants were represented by attorneys upon due notice. Upon the making of a prima facie case before the commissioner, as in this court, it was open to the defense to cross-examine the witnesses produced, to produce witnesses on their own behalf, and otherwise to present such matters of defense as might be deemed necessary and advisable. The hearing accorded
388 to them, and the opportunities afforded at all stages of the proceedings, in my judgment, statisfied the requirements of due process as contemplated by the federal constitution. There was before the commission sufficient evidence from which it could find that the parties who paid the excessive freight and were thereby damaged, were before the court in person or through their assignee, as claimants of reparation, and that the amount of the damage to be repaired sufficiently appeared to make out a prima facie case, demanding from the defendants rebuttal that was not offered. The propriety of the interest allowance, is, I think, sufficiently recognized by the Supreme Court in Meeker vs. Lehigh Valley R. R. Co., 236 U. S. 412 and Mills vs. same, 238 U. S. 473.

There was no error in making the award against the delivering lines alone, to whom, in all cases, the excessive freight was paid. The right of contribution exists against connecting carriers, and that some of the latter may be in the hands of receivers, is a matter for which complainants cannot be held responsible, and which cannot affect their right of recovery. A reasonable attorney's fee is provided in the act and recognized by authority. I think a fee of ten per cent is reasonable under the evidence, and should be allowed. Of course, it will — apportioned in the judgment order against the several roads in accordance with the finding against each. The judgment will be for the full amount found by the commission, and as apportioned by it, less such minor items as may have been conceded at the trial, or established by the proofs. The declarations of law asked by defendants will be overruled and exceptions preserved. A judgmnt entry may be prepared in accordance with the views herein indicated. It is so ordered.

ARBA S. VAN VALKENBURGH, *Judge.*

(*Clerk's Certificate to Transcript.*)

UNITED STATES OF AMERICA, *sct:*

I, John B. Warner, Clerk of the District Court of the United States for the Western Division of the Western District of Missouri, do hereby certify that the foregoing two volumes (Vol. 1 from page *a* to page 157 Vol. 2 from page 158 to page 440) is a ful, true and complete copy of the record, Bill of Exceptions, and Assignments of Errors, and all proceedings in the case of E. B. Spiller vs. Mis-
389 souri, Kansas & Texas Railway Company, et al. No. 4308, as fully as the same appears on file and of record in my office, in accordance with Præcipe for Transcript and Stipulation for One Transcript of ecord which are filed herein and made a part hereof.

I further certify that the original Citations and Writs of Error of each of the defendants in this case are prefixed hereto and returned herewith.

Witness my hand as Clerk and the seal of said Court. Done at office in Kansas City, Missouri, this — day of October, A. D. 1916.

[Seal U. S. Dist. Court, Wes'ern District of Missouri, Western Division.]

JOHN B. WARNER,
Clerk U. S. District Court,
By C. J. MURRAY,
Deputy Clerk.

Vol. 2 Filed Oct. 26, 1916. John D. Jordan, Clerk.

390 And thereafter the following proceedings were had in said causes in the Circuit Court of Appeals, viz:

(Appearance of Mr. Robert Dunlap, Mr. Thomas R. Morrow, Mr. T. J. Morton, Mr. J. W. Jamison and Mr. C. S. Burg, as Counsel for Plaintiff in Error in Cause No. 4819.)

United States Circuit Court of Appeals, Eighth Circuit.

The Atchison, Topeka and Santa Fe Railway Co., Plaintiff in Error,
No. 4819. vs.
E. B. Spiller.

The Clerk will enter our appearance as Counsel for the Plaintiff in Error.

ROBERT DUNLAP,
1011 Ry. Ex. Chgo.

THOMAS R. MORROW,
1st Nat. Bk. Bldg. K. C. Mo.

T. J. NORTON,
1011 Ry. Ex. Chicago.

J. W. JAMISON,
C. S. BURG,
M. K. & T. Ry. Ex. Bldg. St. Louis Mo.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Nov. 1. 1916.

(Appearance of Counsel for Defendant in Error in Cause No. 4819.)

The Clerk will enter my appearance as Counsel for the Defendant in Error.

391

S. H. COWAN,
I. H. BURNEY,
B. F. DEATHERAGE,
GOODWIN CREASON.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 4, 1917.

(Appearance of Mr. Gardiner Lathrop as Counsel for Plaintiff in Error in Cause No. 4819.)

The Clerk will enter by appearance as Counsel for the Plaintiff in Error.

GARDINER LATHROP.

(Endorsed): Filed in U. S. Circuit Court of Appeals, May 29, 1917.

(Appearance of Counsel for Defendant in Error in Cause No. 4820.)

Chicago and Eastern Illinois Railroad Company, Plaintiff in Error,
No. 4820. vs.
E. B. Spiller.

The Clerk will enter my appearance as Counsel for the Defendant in Error.

391

S. H. COWAN,
I. H. BURNEY,
B. F. DEATHERAGE,
GOODWIN CREASON.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 4, 1917.

---

392 (Appearance of Counsel for Plaintiff in Error in Cause No. 4820.)

The Clerk will enter my appearance as Counsel for the Plaintiff in Error.

H. T. DICK,
R. J. INGRAHAM,
L. E. DURHAM.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 12, 1917.

(Appearance of Counsel for Defendant in Error in Cause No. 4821.)

The Chicago & Alton Railroad Company, Plaintiff in Error,
No. 4821. vs.
E. B. Spiller.

The Clerk will enter my appearance as Counsel for the Defendant in Error.

S. H. COWAN,
I. H. BURNEY,
B. F. DEATHERAGE,
GOODWIN CREASON.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 4, 1917.

(Appearance of Counsel for Plaintiff in Error in Cause No. 4821.)

The Clerk will enter my appearance as Counsel for the Plaintiff in Error.

393

W. C. SCARRITT,
E. H. JONES,
CHARLES M. MILLER.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 21, 1917.

(Appearance of Counsel for Plaintiff in Error in Cause No. 4822.)

The Missouri Pacific Railway Company, Plaintiff in Error,
No. 4822. vs.
E. B. Spiller.

The Clerk will enter our appearance as Counsel for the Plaintiff in Error.

HENRY G. HERBEL,
FRED G. WRIGHT,
1114 Ry. Exch. Bldg. St. Louis, Mo.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Oct. 28, 1916.

(Appearance of Counsel for Defendant in Error in Cause No. 4822.)

The Clerk will enter my appearance as Counsel for the Defendant in Error.

S. H. COWAN,
I. H. BURNEY,
B. F. DEATHERAGE,
GOODWIN CREASON.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 4, 1917.

---

394 (Appearance of Counsel for Plaintiff in Error in Cause No. 4823.)

St. Louis, Iron Mountain and Southern Ry. Co., Plaintiff in Error,
No. 4823. vs.
E. B. Spiller.

The Clerk will enter our appearance as Counsel for the Plaintiff in Error.

HENRY G. HERBEL,
FRED G. WRIGHT,
1114 Ry. Exch. Bldg., St. Louis, Mo.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Oct. 28, 1916.

(Appearance of Counsel for Defendant in Error in Cause No. 4823.)

The Clerk will enter my appearance as Counsel for the Defendant in Error.

S. H. COWAN,
I. H. BURNEY,
B. F. DEATHERAGE,
GOODWIN CREASON.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 4, 1917.

---

395 (Appearance of Counsel for Defendant in Error in Cause No. 4824.)

St. Louis and San Francisco Railroad Company, Plaintiff in Error,
No. 4824. vs.
E. B. Spiller.

The Clerk will enter my appearance as Counsel for the Defendant in Error.

S. H. COWAN,
I. H. BURNEY,
B. F. DEATHERAGE,
GOODWIN CREASON.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 4, 1917.

(Appearance of Counsel for Plaintiff in Error in Cause No. 4824.)

The Clerk will enter my appearance as Counsel for the Plaintiff in Error.

W. F. EVANS.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 11, 1917.

(Appearance of Counsel for Defendant in Error in Cause No. 4825.)

Chicago, Rock Island & Pacific Railway Company, Plaintiff in Error,
No. 4825. vs.
E. B. Spiller.

396 The Clerk will enter my appearance as Counsel for the Defendant in Error.

S. H. COWAN,
I. H. BURNEY,
B. F. DEATHERAGE,
GOODWIN CREASON.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 4, 1917.

(Appearance of Counsel for Plaintiff in Error in Cause No. 4825.)

The Clerk will enter my appearance as Counsel for the Plaintiff in Error.

PAUL E. WALKER,
Topeka.

W. F. DICKINSON,
Chicago.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 16, 1917.

(Appearance of Counsel for Defendant in Error in Cause No. 4826.)

Illinois Central Railroad Company, Plaintiff in Error,
No. 4826. vs.
E. B. Spiller.

The Clerk will enter my appearance as Counsel for the Defendant in Error.

S. H. COWAN,
I. H. BURNEY,
B. F. DEATHERAGE,
GOODWIN CREASON.

397 (Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 4, 1917.

(Appearance of Counsel for Plaintiff in Error in Cause No. 4826.)

The Clerk will enter my appearance as Counsel for the Plaintiff in Error.

ROBERT V. FLETCHER,
135 E. 11th Place, Chicago, Ill.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 18, 1917.

(Appearance of Counsel for Plaintiff in Error in Cause No. 4827.)

Missouri, Kansas and Texas Railway Co., Plaintiff in Error,
No. 4827. vs.
E. B. Spiller.

The Clerk will enter our appearances as Counsel for the Plaintiff in Error.

JOSEPH W. JAMISON,
C. S. BURG.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Oct. 31, 1916.

---

398 (Appearance of Counsel for Defendant in Error in Cause No. 4827.)

The Clerk will enter my appearance as Counsel for the Defendant in Error.

S. H. COWAN,
I. H. BURNEY,
B. F. DEATHERAGE,
GOODWIN CREASON.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 4, 1917.

(Order of Submission in Causes No. 4819 to 4827, incl.)

May Term, 1917.

Tuesday, May 29, 1917.

The Atchison, Topeka and Santa Fe Ry. Co., Plaintiff in Error,
No. 4819. vs.
E. B. Spiller.

Chicago and Eastern Illinois R. R. Co., Plaintiff in Error,
No. 4820. vs.
E. B. Spiller.

Chicago and Alton R. R. Co., Plaintiff in Error,
No. 4821. vs.
E. B. Spiller.

The Missouri Pacific Railway Co., Plaintiff in Error,
No. 4822. vs.
E. B. Spiller.

St. Louis, Iron Mountain and Southern Ry. Co., Plaintiff in Error,
No. 4823. vs.
E. B. Spiller.

399 St. Louis and San Francisco R. R. Co., Plaintiff in Error,
No. 4824. vs.
E. B. Spiller.

Chicago, Rock Island and Pacific Ry. Co., Plaintiff in Error,
No. 4825. vs.
E. B. Spiller.

Illinois Central Railroad Co., Plaintiff in Error.
No. 4826. vs.
E. B. Spiller.

Missouri, Kansas and Texas Ry. Co., Plaintiff in Error,
No. 4827. vs.
E. B. Spiller.

Error to the District Court of the United States for the Western District of Missouri.

The above causes, Nos. 4819 to 4827, inclusive, having been called for hearing in their regular order, on application of counsel the time for oral argument is enlarged to two hours to each side, the cases by arrangement and agreement of counsel to be argued together; whereupon argument was commenced by Mr. T. J. Norton for plaintiffs in error, continued by Mr. B. F. Deatherage and Mr. S. H. Cowan for defendant in error and concluded by Mr. Gardiner Lathrop for plaintiffs in error.

Thereupon, these causes were submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

---

400 (Opinion on Merits.)

United States Circuit Court of Appeals Eighth Circuit.
September Term, A. D. 1917.

The Atchison, Topeka & Santa Fe Railway Co., Plaintiff in Error,
No. 4819. vs.
E. B. Spiller, Defendant in Error.

In Error to the District Court of the United States for the Western District of Missouri.

No. 4820.—Chicago and Eastern Illinois Railroad Company, vs. E. B. Spiller.

No. 4821.—Chicago and Alton Railroad Company, vs. Same.

No. 4822.—The Missouri Pacific Railway Company, vs. Same.

No. 4823.—St. Louis, Iron Mountain & Southern Railway Company, vs. Same.

No. 4824.—St. Louis & San Francisco Railroad Company, vs. Same.

No. 4825.—Chicago, Rock Island & Pacific Railway Company, vs. Same.

No. 4826.—Illinois Central Railroad Company, vs. Same.

No. 4827.—Missouri, Kansas & Texas Railway Company, vs. Same.

Mr. T. J. Norton and Mr. Gardiner Lathrop (Mr. Robert Dunlap, Mr. Thomas R. Morrow, Mr. J. W. Jamison, Mr. C. S. Burg, Mr. R. V. Fletcher, and Mr. W. F. Dickinson, were with them on the brief), for plaintiffs in error.

Mr. B. F. Deatherage and Mr. S. H. Cowan (Mr. I. H. Burney and Mr. G. Creason, were with them on the brief), for defendant in error.

401 Before Sanborn and Carland, Circuit Judges, and Booth, District Judge.

Carland, Circuit Judge, delivered the opinion of the Court.

Defendant in error, hereafter called plaintiff, commenced an action against the several plaintiffs in error, hereafter called defendants, to recover from each of them the amount awarded plaintiff by an order of reparation made by the Interstate Commerce Commission January 12, 1914. A count for treble damages under Act July 2, 1890, 28 Stat., 570, was abandoned at the trial. By stipulation a jury was waived and the cases against the Atchison, Topeka & Santa Fe Railway Company and the Missouri, Kansas and Texas Railway Company, were tried to the Court. The trial resulted in a judgment for plaintiff against each defendant for the amount of the award against it with interest and attorneys' fees. A similar judgment was subsequently entered in the cases not tried. The total amount of the judgments aggregated $181,190.87. Each defendant sued out a writ of error from the judgment against it but by stipulation the cases are to be heard here on the record in the case of the Atchison, Topeka & Santa Fe. At

the close of all the evidence the trial court was requested by counself or defendants to declare the law as follows: (a) That upon all the evidence plaintiff was not entitled to recover against any or all of the defendants; (b) that there was not sufficient evidence before the Commission to sustain its order of reparation.

At the trial the plaintiff to maintain the issues on his part introduced in evidence the report and order of the Commission, dated January 12, 1914, in the case of Cattle Raisers' Association of Texas vs. Missouri, Kansas & Texas Railway Company No. 732 (not reported No. A-583). The order of reparation covered a period of time extending from August 29th, 1906, the date when the Commission received the rate making power, under the Hepburn Amendment, to November 17, 1908, the date fixed by the Commission when certain reduced rates should take effect. The Commission had on August 16, 1905, in case No. 732, entitled as above, found that the rates established by the carriers for the transportation of cattle from certain points of origin in Texas, New Mexico, and Oklahoma to Kansas City, St. Joseph and St. Louis, Mo., National Stock Yards, Chicago, Ill., New Orleans and other points, were
402 unjust and unreasonable and in violation of Section I of the Act to regulate Commerce. (11 I. C. C., 298). After the taking effect of the Hepburn Amendment upon new pleadings the Commission adhered to its former ruling and established rates for the future, effective November 17, 1908. (13 I. C. C., 418). The report of the Commission which was made a part of the reparation order had attached thereto Appendix "A" with the following heading:

Consignor	Origin	Destination	Cars	Weight	Rate Paid	Rate Ordered	Amount of Refund	Interest

The information contained in this Appendix is explained by the report of the Commission which reads as follows:

"Prouty, Commissioner:

"The Commission, in its fomer report in this case, 13 I. C. C., 418, 435, stated that reparation would be awarded from August 29, 1906. Claims for reparation were filed with the Comission covering shipments both before and after this date, but no claims are embraced in this report where delivery was made previous to the date above given.

"These claims, as filed with the Commission, describe in detail the shipments on account of which reparation is claimed, stating the point of origin and the point of delivery and the

carrier making the delivery. By the direction of the Commission, a list of the cars with respect to which claims have been filed was furnished to each one of these delivering lines, which was requested by the Commission to check the claims against their records with a view to ascertaining how many of the cars moved as appeared from the records of the defendants. These claims have been checked by these delivering roads, and no carloads are embraced in this report which did not appear from the records of the defendants to have moved as stated.

"In all cases in this report the point of origin, the point of delivery, and the delivering road are named. The complainant has no way of determining the originating carrier, where the point of origin is served by two or more carriers, nor the intermediate carrier, where such a carrier participated in the transportation.

"These shipments of live stock were in all cases consigned to some person at the delivering market, usually a commission firm. The consignor paid the freight in the first in-
403 stance to the delivering carrier in all cases. Subsequently the cattle were sold upon the market and the amount of the freight deducted from the purchase price, remittance being made for the balance. In all cases, therefore, the owner and shipper of the cattle finally paid the transportation charges.

"The table attached to and made a part of this report, as Appendix A, shows with reference to all shipments whose movement was admitted by the defendants the point of origin, the point and road of delivery, the rate of freight which was paid, the rate which should have been paid, and the difference between the amount of freight which was paid and the amount which should have been paid. In some cases the weight of the shipment did not appear, and in all such instances the minimum carload has been applied, since under their tariffs, the carriers must have collected at least upon the minimum.

"Referring to Appendix 'A', we find that the persons named in the column marked 'consignor' shipped from the points named in the column marked 'origin' to the points named in the column marked 'destination,' by the line of road named as the 'delivering road,' the number of cars specified in the column headed 'number of cars,' of the aggregate net weight stated in the column marked 'weight.' We further find that said shippers paid to said delivering carriers freight upon these shipments at the rate which is named in the column

headed 'rate paid.' We find that this rate was unreasonable and excessive and that a reasonable rate to have been charged on the several shipments at the time they were made would have been that rate named in the column marked 'rate ordered,' which was subsequently established by the Commission, and that therefore the said delivering carriers collected from the said shippers unreasonable charges on account of the shipments by the amounts named in the column headed 'amount of refund.' We further find that by these unreasonable exactions of the said carriers the said shippers were damaged in the amounts stated in said last-named column, since they received for their cattle less by those amounts than they would have received had the rate found reasonable been charged, and that said shippers are entitled to reparation in the amounts so specified, with interest from the date of the delivery of the shipment at 6 per cent, which said interest has been computed and is stated in the column marked 'interest.'

404 "In case of certain of the above claims the shipper made an assignment to H. E. Crowley, at that time secretary of the Cattle Raisers' Association. The form of this assignment was the same in all cases, and was as follows:

"In consideration of One Dollar to me in hand paid by H. E. Crowley, Secretary, as well as other considerations good and valuable to me, I hereby transfer and assign to him absolutely, any and all right of action, claims, or demands which I now have, or may hereafter have, against each and every Railway Company over whose railroad I have shipped any cattle, for reparation or reimbursements on account of any excessive, unreasonable, discriminatory, or otherwise unlawful or unjust freight rates or other charges which I have paid to such railway company on such shipments, as per schedule of said shipments hereto attached.

"Having assigned my said claim as aforesaid, I also delegate to said H. E. Crowley, Secretary, full authority in establishing said claim to collect data and evidence in relation thereto from all commission Companies, persons or firms as if I were personally present and acting in the premises.

Witness my signature hereto.

....
Post-office address. Sign here.

"We find that this assignment was made by the shipper in all cases where, in Appendix 'A', the name of such shipper is

followed by the letter 'C.' Subsequently Crowley ceased to be secretary of the Cattle Raisers' Association and was succeeded by E. B. Spiller, and thereafter the shippers assigned certain other claims to Spiller. The form of assignment used was in all cases the same as that which had formerly been employed in making the assignment to Crowley. We find that those shippers whose names are followed by the letter 'S' made assignments in this manner to Spiller.

"After Crowley ceased to be secretary of the Cattle Raisers' Association he assigned all claims which had previously been assigned to him to his successor, Spiller, by assignment in due form, so that Spiller now has whatever right and title Crowley originally took under the assignments to him.

"The attorney for the complainant contended that all claims assigned to Spiller directly, or to Crowley and by him
405 to Spiller as above, were so vested in Spiller that he was entitled to demand and receive payment of the amount of reparation due from the defendants, and that the order of reparation should be made in his favor. Upon the request of the attorney of the complainants the Commission orders payment of reparation to E. B. Spiller in all cases where such assignments were made as indicated in the appendix aforesaid. Where no assignment has been made the order will run directly in favor of the owner as shown by said Appendix.

"All the claims mentioned in the above appendix, with respect to which reparation is allowed, were filed with the Commission within less than two years from the date when the shipment was delivered to the consignee by the delivering road.

"An order will be entered accordingly."

With the introduction of the report, order and Appendix, the plaintiff rested. Thereupon the defendant in support of the allegations of its answer introduced in evidence duly certified copies of the stenographers' notes of the hearings relative to reparation in case No. 732, Cattle Raisers' Association of Texas vs. Missouri, Kansas City & Texas Railway Company before Commissioner Prouty, at Chicago on September 19, 1912, January 24, 1913 and October 17, 1913. It was conceded by counsel for plaintiff that the freight money including the freight-charge was apportioned between the carriers handling each shipment if more than one carrier was involved. A statement was also submitted by counsel for the Atchison, Topeka & Santa Fe Company showing the carriers who participated

in the freight collected by said Company, as shown by Appendix "A". It was also admitted that the Chicago, Rock Island & Pacific Ry. Co.; Chicago and Eastern Illinois Ry. Co.; Missouri, Kansas and Texas Ry. Co.; St. Louis, Iron Mountain and Southern Ry. Co., and St. Louis and San Francisco Ry. Co., were in the hands of receivers. This was all the evidence introduced at the trial below, which in anyway bears upon the questions raised. If there was not sufficient evidence introduced before the Commission to sustain its order then it necessarily follows there was no evidence to sustain the judgment below. As it is sought to sustain the order of the Commission partly by the admissions and acquiescence of counsel for the railroads at the several reparation hearings, it will be necessary at the expense of brevity to detail what transpired at said hearings. At the reparation hearing on September 19,
406 1912, Mr. Williams, Assistant Secretary of the Cattle Raisers' Association, was called as a witness for the claimant and testified that he had applied during the previous four or five years or longer to certain commission houses for certain data in regard to shipments of cattle for which reparation was claimed and from such data had prepared a statement or statements tabulating the claims for shipments of cattle made by members of the Cattle Raisers' Association and for whom said Association had filed claims with the Commission.

In order to explain the methods used in getting up the claims and tabulating them the witness produced a statement of one J. H. Aikins, claimant, and testified that Mr. Aikins was a cattle dealer of quite a little prominence at Kansas City; that the witness understood that Mr. Aikins paid the charges; Aikins, however, did not handle the charges as they were paid by the Commission Company for him. The witness was then asked: "So these are really his cattle?" Ans: "These are really his cattle, at least that is the way the stuff was given to me." Proceeding the witness testified that it was his understanding that shipments of cattle were often billed in the name of the caretaker; understood that Lewis who appeared as shipper in the Aikins statement was a caretaker, but that Aikins owned the cattle; understood that the Commission Company received the cattle and paid the charges; supposed the Missouri, Kansas & Texas was the delivering line, at least that was the information furnished him; that the account in all cases was made out against the delivering line; was informed that the shipment was delivered by the Missouri, Kansas & Texas, and originated on that road. At this point Commissioner Prouty stated to counsel:

"Commissioner Prouty: I am inclined to think, gentlemen, that the only way in which this reparation can be made up is from the books of the carriers. I do not think you could make it up from the books of these commission men, although perhaps you may be able to do that. It seems to me if you can furnish the carrier with some starting point it would not be unreasonable to require the carrier to take these statements and check them up in lieu of requiring the production of the books and files or whatever might be necessary for examination."

"Commissioner Prouty: Never mind what may have been done; it seems to be conceded here that if we can get
407 such information as will enable the railroads to trace these shipments that they will undertake the labor of tracing them and checking them, and we want to endeavor, if possible, to get that information."

Mr. Cowan, representing claimant, replied:

"Mr. Cowan: We have the original statements made by each commission company."

The witness Williams then testified that the cattle Raisers' Association applied to the commission companies to make up a statement for each one of their customers showing to whom the shipments were made and the freight paid; that most of the commission companies complied with this request upon blank sheets furnished for that purpose. From these blanks so furnished statements were compiled for each shipper against each delivering line of railroad; that he obtained the amount of overcharge from a statement made by the tariff department of the Commission, and from those figures compiled the amount that each shipper was entitled to on each carload; that in making up the minimum carload weight, 22000 lbs., was used instead of the exact weight except in the cases of Morris & Company and E. F. Swift, where the exact weights were obtainable. Witness understood that where freight was paid on a shipment of cattle it was paid by the Commission Company to the railroad and the amount deducted from the proceeds of sale except in cases where freight was paid in advance. Witness understood that the caretaker, the man who goes along with the cattle as owner, signed the livestock contract or bill of lading with the carrier; the cartaker uses this contract for his return passage, and it is then returned to the auditor of the carrier without the name of the owner of the cattle on it. The contract shows the consignee, who is always the commission company. Witness then submitted a duplicate

statement of the claims against each carrier and stated that he believed the amount of overcharge in each case to be correct. This tabulated statement was received in evidence. At this point the following conversation was had between Commissioner Prouty and counsel:

"Commissioner Prouty: Now, Mr. Cowan, just what do you claim for these papers you have introduced? Just what probative force do you claim? Do you claim that the introduction of those papers along with the testimony of Mr. Williams makes out for you a prima facie case?

408 "Mr. Cowan: I claim that it would make out a prima facie case if I would also bring before the Commission or an Examiner of the Commission the evidence of the bookkeepers or persons in charge of the books of these commission companies to show that they compiled these claims correctly from their books, that they are books of original entry in the regular course of business.

"Commissioner Prouty: Now, do you claim that without the production of the books themselves?

"Mr. Cowan: I can be compelled probably to produce the books themselves before an Examiner, were there any use of it, or the Examiner of course could be present to hear the testimony of the bookkeepers. I do not see why the books themselves should be produced but we have no objection to going to that trouble if it is necessary.

"Commissioner Prouty: Now, Mr. Norton, (representing the Atchison) what do you say and what do the other defendants say as to the effect of the filing of these statements and as to the production of the books? Are you satisfied to accept the statements in lieu of the bookkeepers, and are you satisfied to accept the bookkeepers in lieu of the books?

"Mr. Norton: Speaking only for my own company, I think the evidence offered amounts to a failure of proof and I should make a motion that the case be dismissed on that account. Mr. Cowan has had since 1906, to get this matter ready. I showed you this morning what slips were in possession of the stock yards people that were intelligible, and if they have been lost in the meantime he has been guilty of laches. There is an enormous amount of money involved here and it seems to me the proof put up to us ought to be of such a nature that we can tell whether Mr. Jones did ship a carload of freight and whether he did pay for it. That is to say, whether he sustained damage by reason of this rate. Now, nothing of that sort has been given to us.

"The matter Mr. Cowan had filed from time to time I submitted to our auditor's office and they said they could not check it at all. This matter which this witness puts in this morning is almost exactly the same sort of matter. Therefore, the question is put up to us of going to great expense and labor in order to prove a case against ourselves. That is what it amounts to."

409 "Mr. Cowan: I do not mean that this proof is complete, of course. It would require in addition to what was proven by Mr. Williams proof of the bookkeepers of the commission companies that the statements they made were correct.

"Commissioner Prouty: I think you would have to have the books of account themselves. My understanding is that the books of account are the evidence themselves and not the testimony of some man as to what they contain."

The statements prepared by Mr. Williams being filed counsel for claimant was directed to furnish copies of the same to each delivering carrier sought to be charged. The further hearing of the case was then adjourned to January 24, 1913. At this hearing Comissioner Prouty said:

"Commissioner Prouty: Let us see in the first place just what has been done by the carriers. You say you have served since the original hearing, or before that time, or since our last hearing and before that time, to each delivering line a list of the shipments with respect to which you claim to recover damages?"

Mr. Norton for the Atchison, Topeka & Santa Fe Ry. Company, referring to a book containing 461 pages served by counsel for claimant upon his Company, replied that the admissions were checked up by the auditor of the road with reference to the car movement and the amount of freight actually collected and as to these facts alone would he admit the correctness of the claimant's statement.

"Commissioner Prouty: Let us see just what the railroads do admit. Take this first item. This involves a shipment in the case of which Aaron & Hughes were the consignors. Somebody who may be termed 'E' was the consignee. It originated upon the Ft. Worth & Denver City Railway at Giles, Texas, and was shipped to destination No. 1, Kansas City, delivered on March 5, 1907. The shipment consisted of two cars. The rate paid was 34½ cents. The rate ordered by the Commission was 31½ cents. The amount of the over-

charges is $13.20. Now, the admission of the carriers would apparently show that somebody made a shipment, Aaron & Hughes perhaps made a shipment on that date and paid that rate, and are entitled to the $13.20. Do you concede, Mr. Norton, that Aaron & Hughes paid the $13.20?

410 "Mr. Norton: No, all that we show by that is that this car did move as stated, and that we collected there the amount specified in Mr. Cowan's sheet, or else some additional amount.

"Commissioner Prouty: Apparently you concede there that you collected the amount specified by Mr. Cowan?

"Mr. Norton: Yes.

"Commissioner Prouty: Now, it is necessary in addition to that, for the Commission to find before it makes an order, that some individual paid that freight. Mr. Cowan, do you claim that the admission of the Railroad Company shows that Aaron & Hughes paid that freight?

"Mr. Cowan: Well, I do not know that I claim that the admission of the railroad is to that effect, but it would seem necessarily so, because we are prepared to prove that in all cases, without exception, there is charged up in the account sales by the comission company the amount of the freight, and that is taken out and deducted from the receipts for the cattle when sold."

Commissioner Prouty addressing Mr. Williams, said:

"Commissioner Prouty: Where do you get your information which you put at the top of the sheet, showing the owner?

"Mr. Williams: From data furnished by the Commission companies."

"Commissioner Prouty: Are there a good many cases where the name of the claimant is not the same as the name of the shipper or consignor?

"Mr. Williams: I hardly know. I suppose there are a good many; I do not remember right now, but I think in all cases they are shown as the consignor in the headings there. We tried to make that the name of the party in whose name they were shipped, so the railroads could more easily check them up."

Commissioner Prouty then said that he was of the opinion that in addition to the checking, there must be proof as to

3 7 7

who paid the freight. Mr. Dickinson representing the Chicago, Rock Island and Pacific Ry. Co., stated that his Company had checked over the statement of claimant and found it reasonably accurate. Commissioner Prouty then said:

411 "Commissioner Prouty: Assuming that you do locate a particular shipment, so you are satisfied that the shipment moved and the freight money was paid by somebody, do you intend to question the fact that the money was paid by the consignor ultimately? I understand the course of business to be that these cattle are sold on the market by some commission men, and the freight money is paid by the commission man and deducted from the amount received from the sale of the cattle and the balance remitted to the owner, which of course amounts to a payment by the owner. Do you make any question that the consignor did in that way pay this freight?"

Mr. Dickinson said in reply:

"I understand that that is the course of business as practiced at the terminal markets at Kansas City and Chicago. Whether there are any exceptions I am not informed. Now, as to the party to whom the money is remitted, that is after this freight has been deducted from the selling price of the cattle, I have no advice on that at all."

Commissioner Prouty then addressing Mr. Wright, representing the St. Louis, Iron Mountain & Southern said:

"Do you make any question as to the right of the consignor to cover those overcharges, or rather that he is to be found to be the person who paid the overcharge?

To which Mr. Wright replied:

"We admit that the freight charges were paid and believe that the statements as rendered by Mr. Cowan are substantially correct, although as to who are the consignors there is some question."

"There are one or two cases in our list where we find a different consignor entirely from what Mr. Cowan stated. We find that the shipment was made from the point stated via the lines stated and delivered on the date, but an entirely different consignor."

Then Mr. Prouty addressing Mr. Fletcher, who represented the Illinois Central said:

"Commissioner Prouty: Now, Mr. Fletcher, are you disposed to question the fact that the claimant, or the person named as claimant, in these cases paid the freight?

"Mr. Fletcher: We are without any information at all on that.

412 "Commissioner Prouty: Suppose the books of the commission man show that the remittance was made to that individual.

"Mr. Fletcher: Without committing myself now, which I cannot be expected to do without reflection, it would seem to me, if the books of the commission merchant showed the payment by the shippers, or owners, and there could be sufficient information to identify that with these things here, it would all have to be proved as to whether the books referred to the same shipment here shown, I would say that would be competent evidence. Whether it would establish it or not, I would not undertake to say now."

At this time Commissioner Prouty stated to counsel for the railroad companies if they deemed it of any advantage to have the order entered against each of the lines participating in each shipment and would furnish the Commission the necessary information so that the Commission might know by what means the shipment moved the Commission would make the order in that way, but unless such information was furnished the order would go against the delivering line. This was said to all the carriers.

Mr. Williams further testified that his information in the main was furnished by the commission companies and in some instances came from the parties themselves. Commissioner then said to Mr. Burg, representing the Missouri, Kansas & Texas:

"Commissioner Prouty: And what do you say as to the proof required to show that the claimant has paid this freight? Is your company familiar with the manner in which this business is done?

"Mr. Burg: Not at all; at least I am not."

Then Commissioner Prouty stated to Mr. Cowan:

"Commissioner Prouty: As soon as you have done all you can toward checking these with the railroads, you will notify the Commission and we will at once have the Examiner go to work for the purpose of stating these accounts. I suppose in doing that it will be necessary for him to do part of his work

in Chicago, where the books of the commission merchants are, and part in Kansas City and perhaps part in St. Louis.

"Mr. Cowan: Yes, it will have to be done—there are a very small number in Chicago, but mainly in St. Louis and Kansas City."

413 The hearing was then adjourned. At the hearing on October 17, 1913, Mr. Williams produced a tabulated statement, practically the same as Exhibit "A" attached to the report of the Commission, and hereinbefore referred to. It was called exhibit "A" at the hearing Commissioner Prouty referring to the tabulated statement then said to Mr. Williams the witness:

"Commissioner Prouty: They show here certain cars, they show the date of the shipment, the initial of the car, and so forth. Do those cars correspond to the detailed statement which you filed? In other words, can you identify 135 of the cars with respect to which you filed a claim, as those 135 cars?

"Mr. Williams: I have not attempted to identify them that way. I took it for granted that they acknowledged those claims by furnishing us with this information, when we filed it with them."

Commissioner Prouty then said to the witness:

"Now, have the other roads which you say have checked up these cars, done it in the same way or with the same detail?

"Mr. Williams: Most of them have; some have not. The Katy furnished a checking and they gave no way bill references or car numbers, nor did the Frisco."

Mr. Prouty then said to Mr. Andrews representing the Atchison Topeka & Santa Fe:

"Commissioner Prouty: Mr. Andrews, do you make any question as to the movement of the cars and the correctness of the statement as made by the complainant, or as verified by you with respect to those cars which you checked?

"Mr. Andrews: We do not make any admission excepting that the cars moved. That is all our checking is supposed to show, it shows on its face.

"Commissioner Prouty: Your check shows they moved from a certain point to a certain point, and that certain freight was paid?

"Mr. Andrews: We did not make any endeavor excepting to see that the cars moved, is all.

"Commissioner Prouty: And moved under the name which appears in the statement checked you?

414 "Mr. Andrews: I don't understand that the consignor or consignee were checked up. They show on their face. The understanding I have about it from our auditors is that they made a complete check of the movement of the cars, and the weights, etc., but I do not think they ascertained who the shippers were.

"Commisioner Prouty: I suppose they made no ascertainment beyond the billing, but they must have checked those against the billing.

"Mr. Andrews: I don't know as to that.

"Commissioner Prouty: Do you make any question about the right of the complainant to an order for reparation as to these cars which you admit moved?

"Mr. Andrews: Why, excepting that they have not shown that they were the shippers. That is a matter that we do not admit. We take the position also that they have not made any special proof of damage.

"Commissioner Prouty: I understand that, but you admit that they paid the freight?

"Mr. Andrews: No, we do not admit that.

"Commissioner Prouty: You admit that somebody paid the freight?

"Mr. Andrews: No, we admit that the cars moved and that so much was collected on each car.

"Commissioner Prouty: Somebody must have paid you the freight.

"Mr. Andrews: But we do not admit that the claimants paid the freight.

"Mr. Cowan: If your Honor please, I do not believe in that qualified admission. There comes in here one time one man who represents the Santa Fe, and there comes in next time another man who represents the Santa Fe.

"Commissioner Prouty: I think we will find on the strength of these statements here that the freight was paid to the commission man and by him charged over against the

owner, whose name appears on these cars that have been checked.

415 "Mr. Cowan: In all cases we furnished the name of the owner who paid the freight.

"Commissioner Prouty: Yes, I understand that.

"Mr. Cowan: They know that. It is a mere quibble to talk about not knowing who paid the freight. The man who owned the cattle paid the freight.

"Now, Mr. Williams, will you please get one of the original—

"Commissioner Prouty: Just wait a minute, Mr. Cowan; do you make any question on the part of the Santa Fe in case the Commission finds these cars were shipped by the persons who make the claim, who appeared on the way bills as the owners, and the freight was paid by that person—do you make any objection to the issuing of an order of reparation at this time with respect to those claims?

"Mr. Andrews: We do on the ground that they have not shown damage.

"Commissioner Prouty: Yes, I understand that that ground is always raised. They have shown damage to this extent, that they paid a higher rate than the Commission found reasonable. It is a legal question as to whether that is damage.

"Mr. Andrews: Yes, but we do not admit that these claimants are entitled to or paid the freight.

"Commissioner Prouty: I am asking you in case the Commission finds that fact, do you make any objection to an order for reparation?

"Mr. Andrews: Excepting that we do not admit that they have suffered damage.

"Commissioner Prouty: To make my question more specific; here are 173 cars claimed by Mrs. Adair. You admit the movement of 135. Do you object to the issuing of an order with respect to those 135 cars before the question as to the remaining cars is determined?

"Mr. Andrews: We object to it on the ground that the claimants have not shown that they were damaged.

"Commissioner Prouty: Oh, well; as Mr. Cowan says, this Santa Fe Railroad should send in some one here that knows

something about this case. That is not the question I
416 am asking you. Suppose we find that they are damaged as to 135 cars. Have you any objection to an order issuing as to those 135 cars before the question has been considered as to the remaining cars? They make claim as to 173 cars?

"Mr. Andrews: Of course we will not object to an order on that basis.

"Commissioner Prouty: That is, you have no objection to the order being split in two pieces?"

"Mr. Andrews: No, sir."

Then Commissioner Prouty said to Mr. Burg representing the Missouri, Kansas & Texas Railroad Company:

"Commissioner Prouty: Do you understand that Mr. Williams' statement is correct, Mr. Burg?

"Mr. Burg: Substantially correct, Mr. Commissioner. Of course we only checked those statements with reference to the movement of the cars; we did not check the freight rates."

"Commissioner Prouty: Now, Mr. Burg, have you any objection to the issuing of an order as to the claims for the cars which have been found by you to have been actually moved, provided the Commission finds such other facts as it thinks warrants the issuing of an order?

"Mr. Burg: Mr. Commissioner, I see no substantial objection to that. The only thought I have in mind is this, perhaps the Commission's order would go into litigation and by issuing the order in piecemeal it might increase our expenses of litigation. But, I do not see that it would make any substantial objection to it."

Mr. Humburg representing the Chicago & Eastern Illinois Railroad Company, was called on by the Commissioner to show what he admitted if anything. Mr. Humburg said:

"This matter, if your Honor please, has been handled by Judge Fletcher, who is out of the city today. But in going through the files I find a letter addressed to Mr. Wiliams under date of January 23, 1913, saying the shipments have been checked and found to be substantially correct. That there are some minor irregularities in the names of consignors, but these are apparently only such errors as arise from frequent transcriptions of way bills.

417 "Commissioner Prouty: You are of the opinion then that the checking is sufficient to identify these cars as having moved?

"Mr. Humburg: Our position upon that matter, if your Honor please, is that the statement we have submitted to Mr. Williams will speak for itself. Beyond that we do not know what the situation is. That is to say, we do not know of our own knowledge who finally bore the charges; and we urge in substance the motion to dismiss filed with the Commission on the ground shown in that motion."

"Commissioner Prouty: Now, Mr. Cowan, it is a long time since I have practiced law, but my recollection is that there is a legal maxim that every claim which can be embraced in a judgment, is presumably embraced, so that a judgment upon an account covering a certain period is a bar to every claim during that period, whether the item was actually embraced or not. I do not see any reason for objection, in fact, it seems to me there is every reason for the Court's position, and I do not see any objection to the issuing of an order with respect to these claims as to which the movement is admitted, an opportunity to try the matter out in court, and if it is decided you can recover, you can then proceed to make proof as to the balance, which may be a matter of some difficulty and it would not be worth while to take up your time and the time of the defendants to make that proof unless some good would come from it. At the same time you must assume the responsibility, if you ask the Commission to make that kind of an order."

"Mr. Cowan: I want to take an order for the claims that have been admitted. I want to take a chance.

"Commissioner Prouty: You understand there has not been anything admitted; that is to say, these railroads have not admitted you are entitled to any money. They have admitted the movement of certain cars, and they earnestly insist you are not entitled to recover; but I think the Commission would find on the facts admitted that you have paid the freight and are entitled to reparation. We hold that the payment of an unreasonable charge imports damage, that of itself shows damage. Now, the railroads claim to the contrary, and are going to try that question."

"Commissioner Prouty: I might say that if Mr. Williams can attend to this, I will ask our examiner to sit down
418 with him immediately, just as soon as he comes to Washington, and go through these checks of the railroads and see what are admitted, so we can make up a statement based on that admission. If within the next few days you can file with the Commission and serve on the defendants a statement of what you ask to have found, that might be of

service to us in rendering our findings, leaving out the exact figures; a statement of facts.

"Mr. Cowan: I think, your Honor, we have anticipated that by the very complete statement Mr. Wiliams has made alphabetically of the claim of every person against each railroad, which we would be glad to furnish, of course, to each railroad I guess you have copies, Mr. Williams. He can furnish copies, and it shows a tabulated and convenient statement.

"Commissioner Prouty: There is one thing more; these shipments were made and the freight paid by a great many different persons. My understanding is that there has been some sort of an assignment of these claims to the secretary of the Cattle Raisers' Association or to the Cattle Raisers' Association. Now, do you ask the Commission to make the order in favor of the original shipper, or do you ask the Commission to make it in favor of the assignees, and if so, what evidence do you offer of the fact of the assignment?"

"Mr. Cowan: My position is this, as I have shown by Mr. Williams this morning, and if it is not sufficiently shown we can have him testify further on the subject, or any commission man in Chicago will testify to the fact, and all the railroads know it, that by the universal custom the commission man pays the freight, which is done, I will say, in all cases. There might be a case in a thousand where it is not done. He is also the agent to collect back overcharges.

"Commissioner Prouty: Suppose we assume that the Commission man did pay the freight and did charge it to the owners. That results in the owner ultimately paying the freight. The owner got so much less for his stuff than if the freight had been lower. That constitutes a claim from the owner?

"Mr. Cowan: It constitutes a claim from the owner, but by the universal custom of the defendants the commission company is the agent of the owner to pay the freight, and to collect back overcharges."

Commssioner Prouty stated that he did not think the mere filing of an assignment unless counsel had consented
419 to it without an opportunity to examine it would be sufficient. Then Mr. Cowan interrogated the witness Williams and asked the witness if he knew as a matter of fact that written assignments had been made and filed with the Cattle Raisers' Association and was in his office. Mr. Williams answered: "Yes, sir". The witness was then asked is it not a fact that "Mr. Crowley, when he retired or since he

retired as secretary of the Association, assigned over to Mr. Spiller all the claims which had been assigned to Mr. Crowley?" The witness: "Yes, sir." Mr. Cowan: "That is a written assignment?" Witness: "Yes, sir." Mr. Cowan then said: "These assignments were taken for nominal considerations because the Cattle Raisers' Association was prosecuting these cases and the secretary and general manager being in one office had charge of the whole matter." Witness: "Yes, sir." The blank form in the Commission's report purported to be that of Mrs. Adair.

Then the following conversation was had between Commissioner Prouty and Mr. Cowan:

"Commissioner Prouty: You let us know right away, Mr. Cowan, whether you want the order made, if one is made, in favor of the original owner, or in favor of the assignee.

"Mr. Cowan: I want it in favor of the assignee, in all cases where we have an assignment. We have considered the matter quite thoroughly and we think and I will brief that point and submit it to the Commission—that we are entitled to the order on behalf of the manager.

"Commissioner Prouty: I do not care to have you brief it, you will have to assume the responsibility in making it. You have the thing all mixed up here so I would not have any idea what ought to be done, so you make up your mind what form you think the order ought to take, and we will put the order in that form.

"Mr. Cowan: If your Honor was going to stay on the Commission I might not remark that I do not think you ought to say we have the thing all mixed up; I think it is rather pertinent.

"Commissioner Prouty: I hope it is as plain to my successor as it is to you.

"Mr. Cowan: I will submit and be very glad to furnish counsel on the other side my conclusions on that subject.
420 As I said, my partner is a very good lawyer and when we can get together, which will be very shortly, I will get him to make up an opinion on this point.

"Commissioner Prouty: Now, of course, there is no proof here that these assignments have been executed by the persons who purport to execute them, but I take it, gentlemen of the defense, it would not be your desire to put Mr. Cowan to the necessity of making proof in each individual case. There is no doubt about it, I suppose, and we will find, unless there is

some objection, that this assignment, was regularly made by the person purporting to execute it."

Mr. Dickinson then said:

"Mr. Dickinson: I would like to suggest that it may be true as far as my knowledge goes, that there is a universal custom of the commission houses to deduct freight charges from the invoice and remit the balance to the consignor, but I do not feel at liberty to admit the sufficiency or the competency of the proof that has so far been offered to sustain that proposition in this case.

"Mr. Cowan: How should I be able to prove it if it is a fact? Do you want somebody from a commission house that is thoroughly familiar with it?

"Mr. Dickinson: Of course, I am not making the proof. I do not think it would be right for me to sit here silently and by my silence admit that you have proved that fact, so far as you have proceeded in this case.

"Mr. Cowan: If there is a question about that, I see Mr. Clifford Thorne, who is the Chairman of the Iowa Commission, here, and who I think is thoroughly familiar with live stock transactions in this country.

"Commissioner Prouty: I do not believe, Mr. Cowan, that would be altogether competent proof. I rather think you have shown it already; but the testimony of one man in one section of the country that a certain thing was done in Iowa would hardly show that it was done in Texas.

"Commissioner Prouty: We will look over the record in that respect, but my impression is the Commission will
421 find from the present record that the owner paid the freight. He sent the cattle to market, sent them to a commission man, and in the ordinary course of business he paid the freight."

The Commissioner then said to Mr. Cowan that he need not introduce any testimony as to what the ordinary course was with the commission companies in paying the freight. All through the hearing the record shows that everyone understood from the statements of counsel for the claimant and the Commissioner, that a man from each commission company would be produced, who would in the presence of counsel testify to the accuracy of the books of the commission company as to who paid the freight and what the custom was, if any, until the Commissioner said that it was unnecessary as the railroads had admitted the correctness of the claims. There

was no dispute on the reparation hearing or at the trial below, but that the Commission had condemned the rate between the points of origin and the several markets heretofore mentioned. What we have stated covers all the evidence that was before the Commission to sustain its order. It is true counsel for plaintiff say there were trunks full of other evidence, but it appears conclusively that there was no other evidence introduced than as above stated.

In approaching the consideration of the questions raised by the assignments of error we are not unmindful that in making inquiry pertaining to interstate commerce, the Commission should not be too narrowly constrained by technical rules as to the admissibility of proof, nor hampered by those narrow rules which prevail in trials at common law. I. C. C. vs. Baird, 194 U. S. 44. In I. C. C. vs. L. & N. R. R. Co., 227 U. S. 93, however, it was said:

At page 91:

"In the comparatively few cases in which such questions have arisen it has been distinctly recognized that administrative orders, quasi-judicial in character, are void if a hearing was denied; if that granted was inadequate or manifestly unfair; if the finding was contrary to the 'indisputable character of the evidence.' Tange Tun vs. Edsell, 223 U. S. 673, 681; Chin Yoh vs. United States, 208 U. S. 8, 13; Low Wah Suey vs. Backus, 225 U. S. 460, 468; Zakonaite vs. Wolf, 226 U. S. 272; or, if the facts found do not, as a matter of law, support the order made. United States vs. B. & O. S. W. R. R., 226 U. S. 14. Cf. Atlantic C. L. vs. North Carolina Corp. Com., 206 U. S. 1, 20; Wisconsin, M. & P. R. Co. vs. Jacobson,
422 179 U. S. 287, 301; Oregon Railroad vs. Fairchild, 224 U. S. 510; I. C. C. vs. Illinois Central, 215 U. S. 452, 470; Southern Pacific Co. vs. Interstate Com. Comm., 219 U. S. 433; Muser vs. Magone, 155 U. S. 240, 247."

At page 92:

"But the legal effect of evidence is a question of law. A finding without evidence is beyond the power of the Commission. An order based thereon is contrary to law and must, in the language of the statute, 'be set aside by a court of competent jurisdiction.' 36 Stat. 551."

At page 93:

"But the more liberal the practice in admitting testimony, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended.

In such cases the Commissioners cannot act upon their own information as could jurors in primitive days. All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense. In no other way can it test the sufficiency of the facts to support the finding; for otherwise, even though it appeared that the order was without evidence, the manifest deficiency could always be explained on the theory that the Commission had before it extraneous, unknown but presumtively sufficient information to support the finding. United States vs. Baltimore & Ohio S. W. R., 226 U. S. 14."

This case was followed and approved in Florida East Coast Railroad Company vs. United States, 234 U. S. 167, and Philadelphia & Reading Railroad Co. vs. United States, 240 U. S. 334; Meeker & Company vs. Lehigh Valley R. R. Co., 236 U. S. 412, was a suit to recover an award of damages made by the Commission for violation of Sections one and two of the Act to Regulate Commerce. The Supreme Court in this case decided that the statute regulating the procedure of the Commission in making an award of damages (Sections 14 and 16) required "a finding which, as applied to the present case, would disclose (1) the relation of the parties as shipper and carrier in interstate commerce; (2) the character and amount of the traffic out of which the claims arose; (3) the rates paid by the shipper for the service rendered and whether they
423 were according to the established tariff; (4) whether and in what way unjust discrimination was practiced against the shipper from November 1, 1900, to August 1, 1901; (5) whether, if there was unjust discrimination, the shipper was injured thereby, and, if so, the amount of his damages; (6) whether the rate collected from the shipper from August 1, 1901, to July 17, 1907, was excessive and unreasonable, and, if so, what would have been a reasonable rate for the service, and (7) whether, if the rate was excessive and unreasonable, the shipper was injured thereby, and, if so, the amount of his damages."

The above excerpt was quoted and approved in Mills vs. Lehigh Valley R. R., 238 U. S. 477. It follows as a matter of course if these findings are required in order that the Commission may make an award of damages they must be supported by evidence. Penna., R. R. Co. vs. International Coal Mining Company, 239 U. S. 184. The law required that the suit in the court below should proceed in all respects like other civil

suits for damages except that on the trial the findings and order of the Commission were prima facie evidence of the facts therein stated. Section 16 of the Act. Meeker & Co. vs. Lehigh Valley Railroad Company, 236 U. S. 412-434; Missouri Pacific Ry. Co. vs. C. E. Ferguson Saw Mill Co., 235 Fed. 478; Western New York P. R. Co. vs. P. Refining Co., 137 Fed. 343. With the above well established principles in mind we approach the consideration of the evidence including the admissions and the so-called acquiescence of counsel for the carriers, which it is claimed justified the findings and order of the Commission. As to the admissions of the carriers the report of the Commission reads:

"These claims, as filed with the Commission, describe in detail the shipments on account of which reparation is claimed, stating the point of origin and the point of delivery and the carrier making the delivery. By the direction of the Commission, a list of the cars with respect to which claims have been filed was furnished to each one of these delivering lines, which was requested by the Commission to check the claims against their records with a view to ascertaining how many of the cars moved as appeared from the records of the defendants. These claims have been checked by these delivering roads, and no carloads are embraced in this report which did not appear from the records of the defendants to have moved as stated."

We also find the following statement in the brief of counsel for plaintiff. "It (the record) shows conclusively that
424 all claims shown in Appendix 'A' were checked by the railroads and they admitted the movement of the cars as claimed, and that the excess freight was paid. By whom paid was not admitted and that the shippers were damaged was not admitted." We think the statements in the brief and report are rather broad in regard to the admissions of the carriers as these admissions appear in the record. Some of the carriers admitted that some of the cars mentioned in the tabulated statement furnished them had moved as stated and that the freight mentioned in the statement had been collected. This is as far as the admission goes as shown by the record, but conceding that the admissions went as far as the Commission claims in their report and as counsel claim in their brief, still the case was left far from being proven. There is no warrant for claiming that the admission that certain freight moved and the freight thereon was collected made a case upon which the Commission could award damages against the carriers, and these admissions are all the legitimate proof upon which the order of the Commission must stand or fall.

The plaintiff was prosecuting the claims for reparation before the Commission as the assignee of an owner of cattle who had shipped the same, paid the unreasonable freight rate, and thereby was injured and damaged. It was, therefore, necessary for the plaintiff to show who the owner was, that he paid the unlawful rate, and was damaged thereby and the extent thereof. The claim was not for an over-charge or extortion, but for damages. In every instance where the Act authorizes the Commission to make a pecuniary award the word "damages" is used. It is said in the report of the Commission:

"These shipments of livestock were in all cases consigned to some person at the delivering market, usually a commission firm. The consignor paid the freight in the first instance to the delivering carrier in all cases. Subsequently the cattle were sold upon the market and the amount of the freight deducted from the purchase price, remittance being made for the balance. In all cases, therefore, the owner and shipper of the cattle finally paid the transportation charges."

With reference to this finding it may be said that there was no proof before the Commission that a single owner of cattle mentioned in Appendix "A", shipped cattle over the carriers' lines and paid the unlawful rate. There was no evidence
425 that the consignors mentioned in Appendix "A" paid the freight in the first instance to the delivering carrier, and that subsequently the cattle were sold upon the market and the amount of the freight deducted from the purchase price, remittance being made for the balance to the owner. There was talk back and forth between the Commissioner conducting the reparation hearings and counsel as to some custom of the commision houses along the lines suggested, but there was no proof of such custom and counsel for the carriers when interrogated by the Commissioner in reference thereto, disclaimed any knowledge of such a custom. Counsel for plaintiff stated at the reparation hearing that he was ready to prove such a custom, but the Commissioner finally concluded that it was unnecessary as the carriers had admitted the claims. The evidence in our opinion wholly fails to show who owned the cattle shipped, or who paid the freight. There was no proof that the consignors mentioned in the tabulated statement, now called Appendix "A", were the owners of the cattle, and it appeared beyond dispute by the testimony of the only witness sworn, that the cattle were not in all cases shipped in the name of the owner, but in the name of the caretaker. The extent to which the admissions of the carriers carried the plaintiff's case is not disputed. The only other

proof that by any pretense may be claimed to show that any owner of cattle shipped them over the carriers lines and paid the unlawful rate is the testimony of the witness Williams who testified that during four or five years he had obtained from the commission houses and other sources "stuff" as he calls it, showing the shipment of cattle, not by the owner, and therefore damaged by the payment of the unlawful rate, but simply that a certain person shipped cattle.

Of course this testimony was the worst kind of hearsay, but counsel claims that it was unobjected to and therefore in an appellate court the objection that it was hearsay cannot be made. We are of the opinion if the proceeding before the Commission are allowed to be conducted in an informal way, so far as the Commission is concerned counsel engaged in the conduct of such proceedings are not required to preserve and protect their rights with the watchful nicety that would be required in courts of justice. Moreover, the record shows in many places where counsel asserted that there was an entire failure of proof, and demanded that the proceedings should be dismissed, so that it cannot be said that counsel acquiesced in the proposition that the tabulated statement, together with
the admissions of the carriers proved a case for damages
426 against them. Again, we are not sitting for the purpose of reviewing errors in the admission or rejection of evidence. If we were and the case was an action at law some exception and a ruling thereon by the court below would be necessary, but the question before us is whether there was any substantial evidence before the Commission to justify its order. Such an inquiry permits us to consider the character of the evidence introduced to support the order. 4th Chamberlayne on Evidence, Section 2702.

As we have said the claim for reparation was made by Spiller as assignee of the cattle owner. It was, therefore, necessary for him to show such an assignment of the claims as would vest him with the legal title thereto if the award was to be made to him. The record shows that some of the claims if assigned at all, were assigned to Crowley, others to Spiller, other still, and it did not appear which ones were simply placed with the Cattle Raisers' Association for collection, and it stands undisputed that whether assigned or placed in the hands of the Association for collection, the only purpose of the assignment or placing for collection was to enable the Cattle Raisers' Association to handle the claims for reparation. On the undisputed evidence, therefore, the legal title to the claims for reparation never vested in Spiller and the Commission was wholly without authority to cause the order of repa-

ration to be made to him. He was not a shipper or owner of cattle and of course was not injured through any act of the carriers. The Commissioner conducting the hearing was much in doubt himself as to whom the order of reparation should be made and the report of the Commission states that it was made to Spiller because his counsel so requested, being willing to take a chance.

At the reparation hearing Mr. Cowan stated that he had the assignments of a large number of claims, which he would submit to the Commission; that there were some claims not covered by assignments, and that the firm of which Mr. Cowan was a member was of the opinion that when the commission companies demanded that the claims be filed for their customers, whether they were members or not of the Cattle Raisers' Association, this was sufficient authority for Mr. Crowley and Mr. Spiller to proceed and file claims where there was no criticism of the assignment, and that while perhaps the order of the Commission ought to be made in the name of the owner of the claim, counsel thought the agency was sufficiently proven to entitle them to collect the claims.

427 After the statement of counsel the Commissioner said "there is no proof here that these assignments have been executed by the persons who purport to execute them, but I take it gentlemen of the defense it would not be your desire to put Mr. Cowan to the necessity of making proof in each individual case. There is no doubt about it, I suppose, and we will find, unless there is some objection, that this assignment was regularly made by the person purporting to execute it." The remarks of the Commissioner related only to the assignment of the claim of Mrs. Adair. In connection with the claimed acquiescence of counsel for the railroad companies, it may be said that we are of the opinion that when a carrier is cited to show cause why it should not be adjudged to pay damages for collecting an unjust rate, it cannot be so adjudged by being told if no objection is made the Commission will proceed and award them. Therefore, the failure of counsel in this case to object to what the Commisioner proposed to do in regard to the assignments does not now [estopp] them from claiming that there was no proof of the assignment of the claims mentioned in Appendix "A". The witness Williams in the very nature of things could not know that over two thousand shippers and claimants had assigned their claims to Crowley and Spiller. Our conclusion is that there was not sufficient evidence to support the finding of the Commission, that the claims had been legally assigned to Spiller and that conceding there was the evidence showed that the

purpose of the assignment was not such as to vest the legal title of the claims in Spiller so as to authorize the Commission to make the award of damages to him.

We now reach the question as to whether there was any proof that any owner of cattle who shipped cattle and paid the unlawful rate, assuming that such fact had been shown, was damaged thereby. It appears from the report of the Commission assuming that their findings on other branches of the case are correct that the damages that each shipper suffered was arrived at by computing the difference between the unlawful rate condemned and the rate ordered in by the Commission without any other proof than the mere shipment of the cattle and the payment of the freight. Was this the legal measure of damages? Some general observations may be made at the outset as to the general result to which the action of the Commission would lead. By Section 15 of the Acts as amended in 1906, the Commission was "hereby authorized and empowered to determine and prescribe what will be just and
reasonable individual or joint rate or rates, charge or
428 charges, to be thereafter observed * * * for such period
of time not exceeding two years as shall be prescribed in the order.

In granting reparation based entirely upon the difference in rates, the Commission instead of establishing a rate for the future for a period not exceeding two years, established a rate for four years, two months and twenty-one days. The Commission in Arlington Heights Fruit Exchange vs. S. P. Co., 39 I. C. C. 88 (93) decided that to award reparation for the period between the date of service of an order establishing a rate for the future and its effective date, would in substance be to disregard the statutory restriction that orders establishing rates for the future should not go into effect less than thirty days from the date of service of the order. The principle involved in this decision is that to grant reparation based alone upon the difference in rates is to put the rate into effect. Again, it must be presumed in the absence of any evidence to the contrary that the carriers involved in this litigation honestly and in good faith established the rate condemned by the Commission, as just and reasonable, yet although they exercised an honest judgment they must pay damages. The case would be different if it arose from a violation of Section two, denouncing favoritism; Section three, denouncing discrimination at Section four, prohibiting a lesser charge for a longer haul, for under each of the last mentioned sections the carrier would know when it violated the law. It was bound to know the law and the facts were within their own knowledge.

Further, whether the carriers established an unreasonable and unjust rate is still open in this very action to the consideration of a jury and if all these shippers had obtained separate orders of reparation, there might be as many diverse verdicts upon the question of reasonableness of the rate as there were cases. These suggestions give rise to the inquiry as to whether reparation based on the difference in rates is lawful under Section one. Certainly all the evils that were depicted by the Supreme Court in the Abilene Oil Case, 204 U. S. 426, are possible to arise in the practice of granting reparation under Section one, based upon the difference in rates. The rate condemned was the legal rate, binding upon both the carrier and the shipper. Manifestly, the shipper could not sue in a court of law to recover back any portion of the legal rate. Patten vs. Chicago, etc., 81 Fed. 545. Can the Commission accomplish the same thing by awarding damages based on the
429 difference in rates alone. The grant of power, however, to the Interstate Commerce Commission to award reparation for any violation of the Act is broad and comprehensive, and the objections stated are rather to the manner and form of granting reparation under Section one, than to the power of the Commission to grant reparation at all.

The case of Penna., R. R. Co. vs. International Coal Mining Company, supra, was a suit to recover damages by reason of the defendant railroad company having two rates for the shipment of coal, a rate for "free coal" and a rate for "contract coal". Under this practice where coal had been sold for future delivery the carrier collected the published tariff rate and rebated the difference between it and the lower rate enforced when the contract of sale had been made. The coal company proved that between April 1, 1899, and April 1, 1901, it had shipped about 40,000 tons of coal on which it had paid the full tariff rate, while other companies shipping freight to the same place at the same time had been allowed on their contract coal rebates of 5, 10, 15, 25, or 35 cents. per ton.

The coal company claimed that as matter of law it was entitled to recover as damages the same rate per ton on all of its shipments as had been rebated to any other person on any of its tonnage shipped at the same time over the same road. The Supreme Court held that the measure of damages adopted by the trial court was erroneous. That to show the plaintiff paid the established legal rate and another shipper received a rebate showed no damage at all, and the cases bearing upon the question are reviewed as well as the Act to Regulate Commerce. If the carrier in the case cited could not be held liable merely for the difference between the established rate and the

amount of the rebate in a case of discrimination under Section 2, it certainly can be argued with much more force that a shipper who has paid the legally established rate under Section 1, may not recover the difference between that rate and the rate established by the Commission for the future without proof that his actual damage did in fact amount to that sum. In the case of Meeker & Co., vs. Lehigh Valley R. R. Co., supra, it appeared that so far as Meeker & Company, sought to recover damages by reason of paying an excessive and unreasonable rate from August 1, 1901, to July 17, 1907, the Commission found that they were damaged to the extent of the difference between what they actually paid and what they would have paid had they been given the rate which the Com-
430 mission found would have been reasonable. The Supreme Court sustained this finding and it was claimed by counsel that to so rule would be in conflict with Penna., Railroad Co. vs. International Coal Mining Company, supra, but the Supreme Court explained that there was nothing in the Meeker & Company Case in conflict with the former case. The court in approving what was said in the International Coal Mining Company case said that in the Meeker Case, the plain import of the findings of the Commission were that the amounts awarded represented the claimant's actual pecuniary loss and that in view of the recital that the findings were based upon the evidence adduced it must be presumed, there being no showing to the contrary, that they were justified by it, therefore, the law as announced in the International Coal Mining Company case, received no modification, but on the contrary was approved in the Meeker Case. See also Penna., R. R. Co. v. Jacoby & Co., 242 U. S. 89; Clark Bros. Coal Mining Co. vs. Penna. Ry. Co., 238 Fed. 642.

In this case we are not dealing with the findings of the Commission, but with the evidence which it is alleged did not support such findings. We, therefore, think that we must hold that the difference in the rate condemned and the rate established without other proof showing injury to the actual owner makes no case for damages against the carrier. So far as the record shows the owners of the cattle might have sold them on the ranges, might have sold them f. o. b. points of origin, or might have sold them at delivered prices to which the freight charge was added. But we need not stop here. Why is the difference in the rate condemned and the rate established for the future the measure of the injury which the cattle owner received? The Commission says because the owner received as much less for his cattle as the rate was unlawfully high and therefore he was damaged in a sum equal to the difference in

rates. *Is this so?* Have freight rates no influence upon the market price of cattle?

When we enter the domain of facts which everybody knows, to which counsel for plaintiff refers us, may we not know that freight rates may destroy commerce, may stop the shipment of cattle, that low freight rates increases the volume of transportation and that freight rates must be such as will allow traffic to move, otherwise the carrier becomes bankrupt as well as the shipper? Can it be said that an owner of cattle
431 who sells them upon the market is necessarily and without proof injured in the amount of the difference in the rate between a high and a low rate, assuming that the freight rate is deducted in each case from the amount for which the cattle sold? If the freight is high is not the price of cattle affected accordingly, if so, how can we say the difference between the high and the low rate is the measure of damages? Upon reason and authority we are of the opinion that we cannot so say.

We are cited by counsel for plaintiff to the case of L. & N. Ry. Co. vs. Finn, 235 U. S. 606, as sustaining the proposition that the Commission had sufficient evidence before it to sustain its order. The case cited was a proceeding to recover upon a reparation order made by the Railroad Commission of Kentucky. The contention was made that the order was not supported by substantial evidence. The Supreme Court in considering this contention decided that the Railroad Company admitted by its answer that the rates mentioned had been charged, collected and received by it, but denied that they were extortionate, unjust or unreasonable and upon this ground and no other denied liability to make reparation. In its opinion the court said: "In short the record shows that the only question made respecting the reparation claims was the general contention that the rates charged by the Company were in fact not unreasonable or extortionate; and that it was in effect conceded that the particular amounts claimed were proper to be awarded as reparation, if the rates charged were determined to be unreasonable and extortionate."

The findings and the order of the Kentucky Commission were therefore sustained, but that is not the kind of a case with which we are now dealing. Counsel for the carriers persistently during the reparation hearings contended that there was no evidence that any owner of cattle had been damaged or that the persons named in the tabulated statement were the owners, or if so, that they had paid the unlawful rate. Upon the contested propositions they conceded nothing. In view of

what we have said we are of the opinion that the findings and order of the Commission were not sustained by the evidence. This being so the prima facie case made by their introduction at the trial below was destroyed when the evidence upon which the findings and order were based appeared. The trial court, therefore, erred in refusing to declare the law to be that upon all the evidence plaintiff was not entitled to recover
432 against any or all of the defendants. We have not found it necessary to discuss or decide the other questions raised by counsel for defendants. The judgment below is reversed and a new trial ordered.

Filed October 26, 1917.

---

433 (Judgment in Cause No. 4819.)

United States Circuit Court of Appeals, Eighth Circuit.

September Term, 1917.

Monday, October 29, 1917.

The Atchison, Topeka and Santa Fe Railway Company, Plaintiff in Error,
No. 4819. vs.
E. B. Spiller.

In Error to the District Court of the United States for the Western District of Missouri.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Missouri, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court, that so much of the judgment of the said District Court, in this cause, from which this writ of error is prosecuted, be, and the same is hereby, reversed with costs; and that The Atchison, Topeka and Santa Fe Railway Company have and recover against E. B. Spiller the sum of Seven Hundred Forty-Four and 45/100 Dollars for its costs in this behalf expended and have execution therefor.

It is further ordered that this cause be, and the same is hereby, remanded to the said District Court with directions to grant a new trial.

October 29, 1917.

---

434 (Judgment in Cause No. 4820.)

United States Circuit Court of Appeals, Eighth Circuit.

September Term, 1917.

Monday, October 29, 1917.

Chicago and Eastern Illinois Railroad Company, Plaintiff in Error,
No. 4820. vs.
E. B. Spiller.

In Error to the District Court of the United States for the Western District of Missouri.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Missouri, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court, that so much of the judgment of the said District Court, in this cause, from which this writ of error is prosecuted, be, and the same is hereby, reversed with costs; and that the Chicago and Eastern Illinois Railroad Company have and recover against E. B. Spiller the sum of Thirty-Three and 70/100 Dollars for its costs in this behalf expended and have execution therefor.

It is further ordered that this cause be, and the same is hereby remanded to the said District Court with directions to grant a new trial.

October 29, 1917.

---

435 (Judgment in Cause No. 4821.)

United States Circuit Court of Appeals, Eighth Circuit.

September Term, 1917.

Monday, October 29, 1917.

Chicago and Alton Railroad Company, Plaintiff in Error,
No. 4821. vs.
E. B. Spiller.

In Error to the District Court of the United States for the Western District of Missouri.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Missouri, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court, that so much of the judgment of the said District Court, in this cause, from which this writ of error is prosecuted, be, and the same is hereby, reversed with costs; and that the Chicago and Alton Railroad Company have and recover against E. B. Spiller the sum of Thirty-Three and 70/100 Dollars for its costs in this behalf expended and have execution therefor.

It is further ordered that this cause be, and the same is hereby, remanded to the said District Court with directions to grant a new trial.

October 29, 1917.

---

436 (Judgment in Cause No. 4822.)

United States Circuit Court of Appeals, Eighth Circuit.

September Term, 1917.

Monday, October 29, 1917.

The Missouri Pacific Railway Company, Plaintiff in Error,
No. 4822. vs.
E. B. Spiller.

In Error to the District Court of the United States for the Western District of Missouri.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Missouri, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court, that so much of the judgment of the said District Court, in this cause, from which this writ of error is prosecuted, be, and the same is hereby, reversed with costs; and that The Missouri Pacific Railway Company have and recover against E. B. Spiller the sum of Thirty-Three and 70/100 Dollars for its costs in this behalf expended and have execution therefor.

It is further ordered that this cause be, and the same is hereby, remanded to the said District Court with directions to grant a new trial.

October 29, 1917.

---

437 (Judgment in Cause No. 4823.)

United States Circuit Court of Appeals, Eighth Circuit.

September Term, 1917.

Monday, October 29, 1917.

St. Louis, Iron Mountain and Southern Railway Company, Plaintiff in Error,

No. 4823. vs.

E. B. Spiller.

In Error to the District Court of the United States for the Western District of Missouri.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Missouri, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court, that so much of the judgment of the said District Court, in this cause, from which this writ of error is prosecuted, be, and the same is hereby, reversed with costs; and that the St. Louis, Iron Mountain and Southern Railway Company have and recover against E. B. Spiller the sum of Thirty-Three and 70/100 Dollars for its costs in this behalf expended and have execution therefor.

It is further ordered that this cause be, and the same is hereby, remanded to the said District Court with directions to grant a new trial.

October 29, 1917.

---

438 (Judgment in Cause No. 4824.)

United States Circuit Court of Appeals, Eighth Circuit.

September Term, 1917.

Monday, October 29, 1917.

St. Louis and San Francisco Railroad Company, Plaintiff in Error,

No. 4824. vs.

E. B. Spiller.

In Error to the District Court of the United States for the Western District of Missouri.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Missouri, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court, that so much of the judgment of the said District Court, in this cause, from which this writ of error is prosecuted, be, and the same is hereby, reversed with costs; and that the St. Louis and San Francisco Railroad Company have and recover against E. B. Spiller the sum of Thirty-Three and 70/100 Dollars for its costs in this behalf expended and have execution therefor.

It is further ordered that this cause be, and the same is hereby, remanded to the said District Court with directions to grant a new trial.

October 29, 1917.

---

439 (Judgment in Cause No. 4825.)

United States Circuit Court of Appeals, Eighth Circuit.

September Term, 1917.

Monday, October 29, 1917.

Chicago, Rock Island and Pacific Railway Company, Plaintiff in Error,

No. 4825. vs.

E. B. Spiller.

In Error to the District Court of the United States for the Western District of Missouri.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Missouri, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court, that so much of the judgment of the said District Court, in this cause, from which this writ of error is prosecuted, be, and the same is hereby, reversed with costs; and that the Chicago, Rock Island and Pacific Railway Company have and recover against E. B. Spiller the sum of Thirty-Three and 70/100 Dollars for its costs in this behalf expended and have execution therefor.

It is further ordered that this cause be, and the same is hereby, remanded to the said District Court with directions to grant a new trial.

October 29, 1917.

---

440 (Judgment in Cause No. 4826.)

United States Circuit Court of Appeals, Eighth Circuit.

September Term, 1917.

Monday, October 29, 1917.

Illinois Central Railroad Company, Plaintiff in Error,
No. 4826. vs.
E. B. Spiller.

In Error to the District Court of the United States for the Western District of Missouri.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Missouri, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court, that so much of the judgment of the said District Court, in this cause, from which this writ of error is prosecuted, be, and the same is hereby, reversed with costs; and that the Illinois Central Railroad Company have and recover against E. B. Spiller the sum of Thirty-Three and 70/100 Dollars for its costs in this behalf expended and have execution therefor.

It is further ordered that this cause be, and the same is hereby, remanded to the said District Court with directions to grant a new trial.

October 29, 1917.

---

441 (Judgment in Cause No. 4827.)

United States Circuit Court of Appeals, Eighth Circuit.

September Term, 1917.

Monday, October 29, 1917.

Missouri, Kansas and Texas Railway Company, Plaintiff in Error,
No. 4827. vs.
E. B. Spiller.

In Error to the District Court of the United States for the Western District of Missouri.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Missouri, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court, that so much of the judgment of the said District Court, in this cause, from which this writ of error is prosecuted, be, and the same is hereby, reversed with costs; and that the Missouri, Kansas and Texas Railway Company have and recover against E. B. Spiller the sum of Thirty-Three and 70/100 Dollars for its costs in this behalf expended and have execution therefor.

It is further ordered that this cause be and the same is hereby, remanded to the said District Court with directions to grant a new trial.

October 29, 1917.

442 In the United States Circuit Court of Appeals, Eighth Circuit

No. 4819.

Also Nos. 4820, 4821, 4822, 4823, 4825, 4826 and 4827.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Plaintiff in Error,

vs.

E. B. SPILLER, Defendant in Error.

Petition for Rehearing by E. B. Spiller, Defendant in Error.

The defendant in error respectfully petitions the court to grant a rehearing in the above entitled causes for the following reasons:

I.

Because this court in its opinion in detailing what transpired before the Interstate Commerce Commission at the hearings before it. has omitted and apparently failed to note some of the statements of counsel and evidence of the witness Williams at those hearings of supreme importance in determining whether or not there was sufficient evidence before the Commission to support its findings, especially when considered in the light of the ruling of the U. S. Supreme Court in the case of L. & N. Railway Co. v. Finn, 235 U. S. 606. This court at page 22 of the printed copy of its opinion says: "What we have stated covers all the evidence before the Commission to sustain its order," and at page 25 of the opinion the court after discussing the admissions of the railroads and of the claimant says: "And these admissions are all the legitimate proof upon which the order of the Commission must stand or fall," and then the court after
443 quoting from the findings of the Commission that "These shipments were in all cases consigned to some person at the delivering market, usually a commission firm. The consignor paid the freight in the first instance to the delivering carrier in all cases. Subsequently the cattle were sold upon the market, and the amount of the freight deducted from the purchase price, remittance being made for the balance. In all cases therefore the owner and shipper of the cattle finally paid the transportation charges." Said, "there was no proof before the Commission that a single owner of cattle mentioned in appendix A shipped cattle over the carrier's lines and paid the unlawful rate. There was no evidence that the consignors mentioned in appendix "A" paid the freight in the first instance to the delivering carrier, and that subsequently the cattle were sold upon the market and the amount of the freight deducted from the purchase price, remittance being made for the balance to the owner.

There was talk back and forth between the Commissioner conducting the reparation hearings and counsel as to some custom of the commission houses along the lines suggested, but there was no proof of such a custom— * * *—The evidence, in our opinion, wholly fails to show who owned the cattle shipped or who paid the freight;" that Williams "testified that during four or five years he had obtained from the commission houses and other sources 'stuff', as he called it, showing the shipment of cattle, not by the owner, and therefore damaged by the payment of the unlawful rate, but simply that a certain person shipped cattle."

To show that the court is in error in the above statements we beg to quote from the record as follows:

"I may explain for the purpose of the record that ordinarily the cattle shipper keeps no definite sort of books; he depends on his commission company to do that. In all the cases we have the shipments are consigned to commission companies at the various markets. The commission companies sell the cattle and make up an account of sales so-called, transmitting to the shipper or the owner the proceeds after deducting out of the proceeds the amount of freight, feed charges and other charges of that character. They keep regular sets of books which are made up from the memoranda, consisting of the expense bills that are furnished by the stock yards companies, which generally collect the freight and distribute the money to the railroads, and by the scale tickets that are turned into the office on the sale of the live stock. Those memoranda are generally destroyed. I do not think they exist, probably could not be found at all
444 after a short time, because the commission men say that such an amount of stuff would be a great burden for the commission companies to keep so they depend upon their original books of entry from which the account sales are made out.

"The Cattle Raisers Association applied to the commission companies to make up a statement from each of their customers to show the shipments made and the freight paid. Most of the commission companies complied with that request and it was made up on blanks printed and furnished for that purpose, and made it in duplicate or in triplicate; in some cases duplicates and some cases triplicates" (p. 222).

"In order to ascertain the amount of the overcharge Mr. Williams was furnished with a statement made up by the tariff department of the Interstate Commerce Commission, showing for each station the old rate and the rate fixed by the Commission, and from those figures has compiled the amount that each one is entitled to on each carload" (p. 223).

"Commissioner Prouty: Now, just what would the commission agent be able to testify to from his books? Suppose he was to come before some examiner of the Commission and produce his books, just what could he testify to?

Mr. Cowan: The most that I know is that he could testify they kept their books correctly, that this is a regular entry made at the time of the transaction——

Commissioner Prouty: What do his books show?

Mr. Cowan: His books will show the owner of the cattle, the amount of the freight——

Commissioner Prouty: In this case would the books show that Mr. Aikens was the owner of these cattle?

Mr. Cowan: Undoubtedly.

Commissioner Prouty: He was the man they settled with?

Mr. Cowan: Oh, yes; he was the man they rendered the account sales to.

Commissioner Prouty: What else would they show? They would show that the cattle were received?

Mr. Cowan: That the cattle were received, sold, and the freight was paid, advance charges paid, and the balance of the money remitted" (pp. 228-9).

"Mr. Cowan: We have the original statements made by each commission company" (p. 231).

"Mr. Cowan: Well, it seems the commission company received the live stock and paid the freight and their regular set of books shows they did that. It seems to me that the evidence of the payment of freight thus produced is amply sufficient without going into the question of the car numbers or things of that sort" (pp. 232-3).

"Mr. Cowan: Now, Mr. Brooks, your billing will show the name of the caretaker?

445 Mr. Brooks: Yes, sir.

Mr. Cowan: Your billing does not show the name of the owner?

Mr. Brooks: No.

Mr. Cowan: The commission company's books, however, show the name of the owner?

Mr. Brooks: Yes.

Mr. Cowan: And for whom the freight was paid, and for that reason it seems to me the commission company's books are the ones to show who really paid the freight and if you went and got all your tickets they would show the caretaker and not the owner of the cattle" (pp. 235-6).

* * * * * * *

"Mr. Cowan: Mr. Williams, you heard my statement this morning with respect to the character of information furnished the Cattle Raisers' Association of Texas by the live stock commission companies at the various markets. Were you, during this time, in the employment of the Cattle Raisers' Association?

Mr. Williams: Yes, sir.

Mr. Cowan: Are you familiar with the facts which I have stated?

Mr. Williams: Yes, sir.

Mr. Cowan: Were those statements which have been filed with the Interstate Commerce Commission furnished to the secretary's office of the Cattle Raisers' Association before they were sent to Washington?

Mr. Williams: Yes, sir.

Mr. Cowan: You were then working under Mr. Crowley, the secretary of the association?

Mr. Williams: The first part I was, the second part I was under Mr. Spiller.

Mr. Cowan: Will you state for the purpose of the record as to whether what I said about it is the correct history of the making up of these statements?

Mr. Williams: It is, to my knowledge.

Mr. Cowan: Were the statements that were furnished by the commission companies furnished in duplicate, one set filed with the Interstate Commerce Commission and the other set left in the office of the Cattle Raisers' Association?

Mr. Williams: Well, the data was furnished by the commission companies and tabulated from that office and furnished to the Interstate Commerce Commission.

Mr. Cowan: Are you able to testify that the data which you now have here compiled from statements made by the commission companies is correctly compiled and shows truly the figures as furnished by the commission companies?

Mr. Williams: We have been very painstaking and tried to get it exactly correct.

446 Mr. Cowan: Have you examined the books and records of any of the commission companies at Kansas City and St. Louis to ascertain the facts as to whether or not they keep a record showing the consignors and themselves as the consignee, the date of the shipment, the number of cars and the amount of freight paid as reflected in the compilation which you have made?

Mr. Williams: Yes, sir, I have.

Mr. Cowan: Do you know whether or not it is a fact that live stock shippers keep records of their shipments or whether they depend upon the commission companies to do so?

Mr. Williams: There are very few of them that keep any records themselves. They depend upon the commission company as their agent to represent them, just as somebody else depends on their attorney, and such as that. In case where they need to look up the information they always write to the commission company and ask for a duplicate account sale or any other information they may desire. While in Kansas City and St. Louis the other day I was very particular to look into that and to ask them if I should come into their office and say I shipped a certain number of cars of cattle there in 1906 if they could tell me all the information you asked a minute ago and everyone whom I asked said yes, that they could with their records and the records of the stock yards company give all that information.

Mr. Cowan: Are you familiar with the fact that when this case was decided by the Interstate Commerce Commission holding these rates were unreasonable, that circular letters were issued to members of the Cattle Raisers' Association and to other shippers, to furnish the information as to the date of their shipments, the number of cars shipped, where from and to where? Are you familiar with that fact?

Mr. Williams: I remember it, yes, sir.

Mr. Cowan: Now, is it or not a fact that the shippers in practically all cases referred the secretary of the association to the commission company?

Mr. Williams: In a great many cases they just simply forwarded our letter to the commission company and they sent us the data in connection with the return of the letter sent them by the shippers.

Mr. Cowan: Is it or not a fact that in all cases where freight was paid on a shipment of cattle that the amount of money is paid by the commission company to the railroad and deducted out of the account sales?

Mr. Williams: That is my understanding, that it is always done, except possibly a few exceptions where some payments might be made in advance; my understanding, however, is that it is always paid by the commission company.

Mr. Cowan: And deducted out of the account sales?

447 Mr. Williams: Deducted from the proceeds.

Mr. Cowan: Do you know of any case in which that is not done?

Mr. Williams: I don't know of any.

Mr. Cowan: You have seen a great many account sales?

Mr. Williams: Yes, sir.

Mr. Cowan: And that is always the case according to your information?

Mr. Williams: As far as my personal knowledge and information is concerned" (236-7-8).

"Mr. Cowan: You had before you the order of the Interstate Commerce Commission in this case?

Mr. Williams: Yes, sir; showing the rates which should have been charged.

Mr. Cowan: And you had a statement from the tariff department of the rate from each and every station, the old rate and the new rate?

Mr. Williams: Yes, sir.

Mr. Cowan: Are you able to state that the compilation you have made as to the amount of the overcharge is correct?

Mr. Williams: I have every reason in the world to believe that is correct. I have been very diligent in trying to get it so" (p. 240).

"Mr. Cowan: Mr. Davis, Mr. Williams and I went out to the stock yards — examined the books of Evans-Snider-Buel Company and Clay, Robinson & Company. We found they have very complete records here. The complete data with respect to shipments is contained in the Commission Company's books.

We found that they do not have as complete data either at St. Louis or Kansas City, at least the bookkeeper or secretary of the Evans-Snider-Buel Company told us they did not keep as complete a record at either Kansas City or St. Louis as they do here. Then we went to the office of the Santa Fe agent there at the stock yards and his books show every shipment, car number, all of the charges, the freight paid, the initials of the car, and as far as I could see an absolutely complete record.

Mr. Norton: Where was that?

Mr. Cowan: The Santa Fe office at the stock yards. He thinks that they keep the same records at Kansas City. There is not the slightest trouble of identifying every shipment, according to the record that is kept here in Chicago, if they keep the same sort of record at Kansas City.

Mr. Davis was with me and he looked it over. The agent there does not think there is any difficulty at all in identifying every shipment.

Every one of those accounts must check with the other. I saw Mr. Witten, the general superintendent of the Stock Yards
448 Company, and he said that the record of the Commission Company and the record of the Railroad Company and the record of the Stock Yards Company absolutely must correspond and that there wasn't any difficulty at all, in his opinion, of identifying every shipment.

As far as I could see if we give the date and the number of cars shipped and the name of the consignee, the Commission Company, there isn't any difficulty at all except the amount of labor that will be required of a clerk to take these records and identify every shipment beyond any question. That is the way it looked to me. Now, I do not know what Mr. Davis thinks about it. If he has arrived I think he will substantiate that statement" (250).

"Commissioner Prouty: Why, they show that the commission merchant received a certain number of carloads of cattle and a certain number of cattle from a certain individual in Texas. Those cattle were shipped from a certain point, were sold on account of this man at Kansas City and the proceeds less freight, receiving charges, and so forth, were remitted to him.

Mr. Norton: The witness said yesterday that those books might show the cattle in the name of the caretaker and not the owner at all.

Commissioner Prouty: No, I don't think so, because the accounts are kept in the name of the owner. He did say, however, that if the shipping receipt was produced that that would be signed by the caretaker" (p. 253).

"Mr. Cowan: In reply to what Mr. Wood has said, for the purpose of the record I desire to say that all of these railroad companies collected the money from the commission companies. The commission companies pay the money for the shipper. The car number is entirely immaterial. It does not make one bit of different except for the purpose of their being able to check it up against a connecting line in order to make each connecting line pay the amount that it ought to pay by reason of the divisions of the freight rates that these lines have between one another" (p. 259).

"Commissioner Prouty: Do they show the point of origin, that is, do they show from what point the shipment was made?

Mr. Cowan: I am not able to answer that question, except that the books out here in the office of Evans-Snider-Buel, and Clay-Robinson do.

Commissioner Prouty: These statements of yours all show the point of origin?

Mr. Cowan: I think so. Is that right, Mr. Williams?

Mr. Williams: Yes, sir.

Commissioner Prouty: How did you get that, Mr. Williams?

449 Mr. Williams: For the most part it came from the commission company. In some instances where the commission company might have failed to give it, we wrote the shipper and asked him as to what point it originated from. But for the most part it is from the commission company itself" (p. 264).

At the second hearing, January 24, 1913:

"Mr. Cowan: Now, we have examined the Commission Companies' books again. We have also applied to the Stock Yards Company for information, meeting with the same refusal we have met before. We are prepared to show now by the books of the Evans-Snider-Buel Company, that being the company that does business in Kansas City, St. Louis, Ft. Worth, Chicago, and I think Omaha and St. Louis—all the markets—as being representative. We have a witness here, Mr. Moore, who has been engaged in the business many years, managing the accounting department of the Evans-Snider-Buel Company, and he has brought the books of original entry, as requested by Your Honor, and is prepared to show that it shows the source of information to which the Examiner of the Commission could go to secure everything we propose to prove" (p. 267).

"Commissioner Prouty: The ordinary course of business, as I understand it, was to ship in these cattle, the consignor being ordinarily the owner of the cattle, but as I recall it, some cases were pointed to in the former hearing in September, when the consignor was not the owner of the cattle. Is that right?

Mr. Cowan: That is true, but not in our statement, for the reason that we took our statements from the commission companies who were doing the business for the owner. Many times the caretaker would really be the party who signed the shipping contract, but the commission company pays no attention to that. It is dealing with the man who owns the cattle and makes out the account sales, and deducts the freight, so in all cases we have named here, we have the consignor who was in fact the owner, regardless of whether the billing was in his name or not.

Commissioner Prouty: Who was the consignee, number "E"?

Mr. Williams: In most cases this line on top represents the owner, or claimant, and under the heading of consignor is the name in which the cattle was shipped, as I suppose they would appear on the railroad companies' books, but the commission companies' records, as furnished us, would show who was the owner and entitled to this overcharge.

Commissioner Prouty: Where do you get your information which you put at the top of the sheet, showing the owner?

450 Mr. Williams: From data furnished by the commission companies. In some cases——

Commissioner Prouty: Are there a good many cases where the name of the claimant is not the same as the name of the shipper or consignor?

Mr. Williams: I hardly know. I suppose there are a good many; I do not remember right now, but I think in all cases they are shown as the consignor in the headings there. We tried to make that the name of the party in whose name they were shipped, so the railroads could more easily check them up.

Commissioner Prouty: In a case of that kind, Mr. Cowan, of course the railroad has no information except as to the party who acted as consignor.

Mr. Cowan: That is all the information the railroad company has, but the commission companies' books in all cases, of course, dealing with the man who is the owner, always show who paid the freight, and that ought to be, and I think it is in all these sheets, is it not, Mr. Williams?

Mr. Williams: Yes" (p. 272).

"Mr. Cowan: The proof consists, as I explained here before, of the books of original entry of the commission company, who on account of Aaron & Hughes, paid the money. That was the reason that we had a little controversy before Your Honor here before, in regard to the commission companies' books. They are the books of original entry and the only books which show the payment of the freight for and on account of the actual shippers who moved the cattle" (p. 274).

"Commissioner Prouty: * * * Now, the question is whether you would require Mr. Cowan to produce these books and establish that fact with respect to every shipment; and I am addressing this same question to all the attorneys here, if the matter comes up in the same way.

Mr. Norton: Speaking for myself on the impulse of the moment, I should not want to put Mr. Cowan to any unnecessary work, and it would amount to unnecessary work for us. I should imagine that those books might be examined, something as a Master would examine them, and let him make a report.

Commissioner Prouty: That is, you would like to have the books brought in before the Examiner, who is to take this evidence and have them examined in a general way by you, so you can see——

Mr. Norton: No, I do not think I would go that far. I presumed they might be examined out there by him.

Commissioner Prouty: That is, you would allow the Examiner to go out there and examine the books?

Mr. Norton: I rather think so, answering on the spur of
451 the moment, in company with somebody representing our company" (p. 275).

Mr. Cowan: * * * Now, I ask the attorneys of the railroads, as they probably now know, whether it is the fact that in all cases the freight was paid by the commission company and deducted out of the account sales of the cattle, as I have stated. I presume all you gentlemen know that to be the case. Is that right, Mr. Wood?

Mr. Wood: I do not know anything about it, except what you say about it, Judge.

Mr. Cowan: I would like to call Mr. Moore, who has spent many years in the commission business. He has kept the books of the

firm of Evans-Snider & Buel, and he has the books here, so as to explain for the purpose of the record and for the information of the Commissioner just what the course of proceeding is.

Mr. Norton: I think that was stated in the other hearing. I think our own live stock man stated that.

Mr. Cowan: I think he did.

Mr. Norton: We are anxious to get to another meeting, and you can put that in, if necessary, later" (p. 277).

"Mr. Cowan: If required to do it, we would have to do that, as a matter of law and evidence. But the reason I brought Mr. Moore, was the suggestion made by Your Honor before, that before appointing an examiner to go into these books, the commission would like to examine one set of books from some concern to see that we have the source of information to which the examiner can refer. Now, we have that here.

Commissioner Prouty: That was upon the proposition that the carriers were not going to check these accounts at all.

Mr. Cowan: I know that.

Commissioner Prouty: They have now checked up, or Mr. Norton for his company, has checked up these accounts as far as he can. Now, if you find you cannot locate these thousand cars by the books of the railroads, and the stock yards, and that you have to rely upon some other evidence to show the fact of the shipment, and the payment of the money, then it may be necessary to hear these commission men. But I do not think you have reached that point" (p. 278).

The commissioner was referring to about 1,000 cars out of a total of 5,000 not checked by the Santa Fe. That road checked 4,000 cars out of 5,000. The 1,000 cars not checked were not included in the order.

"Commissioner Prouty: * * * I understand the course of business to be that these cattle are sold on the market by some commission men, and the freight money is paid by the commis-
452 sion man and deducted from the amount received from the sale of the cattle and the balance remitted to the owner, which, of course, amounts to a payment by the owner. Do you make any question that the consignor did in that way pay this freight?

Mr. Dickinson: I understand that that is the course of business as practiced at the terminal markets at Kansas City and Chicago. Whether there are any exceptions I am not informed. Now, as to the party to whom the money is remitted, that is after this freight has been deducted from the selling price of the cattle, I have no advice on that at all" (p. 279).

"Commissioner Prouty: Well, it appears that in some cases, perhaps a good many cases, the owner was not the consignor. As I understand the matter Mr. Cowan has obtained the name of the owner from the books of the commission men. Is that right, Mr. Cowan?

Mr. Cowan: That is correct.

Commissioner Prouty: And it is probable that the name of the owner is correctly stated. The consignor might not be correctly

stated because the name of the consignor might not agree with that of the owner. Mr. Wood, your line delivered some of these shipments, did they not?" (p. 282).

"Commissioner Prouty: My information or understanding is that the information has in all cases been obtained from the commission men.

Mr. Cowan: I will ask Mr. Williams that. I think that is true. Possibly there are a few shipments where the information was otherwise obtained for these shipments since August, 1906. Can you state, Mr. Williams, whether the information was obtained in all cases from the commission company?

Mr. Williams: Not in all cases. I think in a few cases it was furnished by the party himself. For instance, you take Swift & Company and Morris & Company, they furnish us information as reliable as that by the commission companies, and a few of the larger shippers also furnish it.

Mr. Cowan: In the main, the source of information was the commission company's books?

Mr. Williams: Yes.

Mr. Fletcher: I would like to make an additional observation, that I understand from Mr. William's statement that the person named as consignors on these slips were in most cases obtained from the books of the commission companies, and that they in most cases represent the true owner of the shipment. I also have in mind the statement made at the previous hearing and here, that in many cases these consignors who were named on the bill were not the real owners. We think in addition to the statement made by Mr. Wood about the auditor having expressed some doubt whether the real consignor was named, that shakes my confidence in the
453 checking of these slips as to whether the consignor there named is the consignor shown in the billing, or whether it is the real owner.

Commissioner Prouty: Well, the name of the claimant has in all cases been taken from the books of the commission man, as I understand Mr. Cowan.

Mr. Cowan: In all cases except the few instances like he mentioned, like Morris & Company and Swift & Company.

Commissioner Prouty: The name of the claimant shows the name of the person to whom the payment was made by the commission merchant; that is to say the owner of the cattle. Now, it appears in some cases, for matters of convenience, the owner was not also the consignor, but it would occur to me that the claimant is probably correctly represented, although the consignor might not be.

Mr. Fletcher: I wondered if there was any objection to our withholding the filing of that list until we could have that particular fact checked by the auditing department, as to whether the consignor named there is the consignor named in the billing, or whether they just took it for granted that he was.

Commissioner Prouty: I suppose there is no objection to that.

Mr. Fletcher: They can be filed now if necessary, but I would like to have that fact ascertained by our line.

Commissioner Prouty: But that should be done right away.

Mr. Fletcher: Yes.

Commissioner Prouty: I suppose you have those way bills separated from the others in some file, so you can complete the check in a short time?

Mr. Fletcher: Yes" (pp. 284-5).

"Mr. Cowan: I presume that the proof that would be made by Mr. Moore, if he were placed upon the stand, is practically waived. We have the books here.

Commissioner Prouty: We will see whether or not it is waived, but I do not understand they insist upon it now, or rather the suggestion is that the Examiner of the Commission may examine these books.

Mr. Norton: He may be well able to do it then and report" (p. 288).

"Mr. Cowan: The commission companies selling livestock on the markets have furnished the Cattle Raisers' Association a list of the claims, of their purchases?

Mr. Williams: They did, yes, sir.

Mr. Cowan: These claims were originally filed and are now on file with the Interstate Commerce Commission?

Mr. Williams: The tabulation is on file, yes, sir.

Mr. Cowan: You have retained duplicates in your office?

454 Mr. Williams: Yes, sir.

Mr. Cowan: Those duplicates are correct according to the original claims filed with the Commission?

Mr. Williams: Yes, sir.

Mr. Cowan: They have been furnished to you through the regular course of business?

Mr. Williams: Yes, sir.

Mr. Cowan: The commission companies are the universal agents for the collection and payment of freight out of the proceeds of cattle shipped to them?

Mr. Williams: They are.

Mr. Cowan: They do not pay any regard to the man who is care taker of the live stock, but only make their entries in their books against the owners of the cattle?

Mr. Williams: Yes, sir.

Mr. Cowan: They render to the owners when they sell the cattle, an account sales?

Mr. Williams: Yes, sir.

Mr. Cowan: Press or other copies of which are retained in their offices in Kansas City, St. Louis, Chicago, St. Joseph, New Orleans, and other markets?

Mr. Williams: Yes, sir.

Mr. Cowan: From their books they have made out and furnished to you these lists of claims?

Mr. Williams: Yes, sir.

Mr. Cowan: Those lists show the date of the shipment, the owner, the amount of freight paid, and the railroad to which the freight was paid.

Mr. Williams: Yes, sir.

Commissioner Prouty: Do they show the point of origin?

Mr. Williams: They show the point of origin. In a few instances one or two of the commission companies failed to show originally the point of origin. We took that up with the commission companies and with the shippers and that was supplied later.

Commissioner Prouty: So that in all cases the point of origin appears?

Mr. Williams: The information is complete, yes, sir.

Mr. Cowan: You obtained from the Interstate Commerce Commission a list of the rates from every station in Texas, Oklahoma and New Mexico that is involved in these claims?

Mr. Williams: Yes, sir.

Mr. Cowan: That came from the traffic department of the Interstate Commerce Commission?

Mr. Williams: Yes, sir.

Mr. Cowan: Containing a large number of sheets, which showed the rate from every station?

455 Mr. Williams: Yes, sir.

Mr. Cowan: The claims you have made up were made on the advances that were made in the rates in March, 1903, or during the year 1903?

Mr. Williams: During the year, 1903, yes, sir.

Mr. Cowan: Which are the rates condemned by the Commission in its decision in the Cattle Raisers case?

Mr. Williams: That is my understanding.

Mr. Cowan: And the amount of claims you have made are based upon the advance that was condemned by the Commission?

Mr. Williams: Yes, sir.

Mr. Cowan: You have not included interest?

Mr. Williams: No, sir.

Mr. Cowan: But you give the date of the shipment so that interest may be computed just as a mathematical computation?

Mr. Williams: Yes, sir.

Mr. Cowan: When we had the hearing here before, as you heard me say to the Commissioner, these claims, as you had made them out for each individual shipper, were submitted to the various railroads interested?

Mr. Williams: Yes, sir.

Mr. Cowan: After they had made a check of these claims they were returned to you?

Mr. Williams: They were.

Mr. Cowan: Have you made a tabulation of all the claims which the railroads themselves have admitted in their checking as being correct?

Mr. Williams: I have made a tabulation of all the checkings reported back to me by the various railroads, yes, sir.

Mr. Cowan: Will you produce the tabulated alphabetical list of those claims?

(The list so offered and identified was received in evidence and thereupon marked 'Complainants' Exhibit No. A, received in evidence October 17, 1913, witness Williams,' and is attached hereto.)

Mr. Cowan: Take some one, no matter which one, and read it to the Commissioner.

Commissioner Prouty: Just let me see that list before he commences to read.

(Document handed to the Commissioner.)

Mr. Cowan: For the purpose of the record, Mr. Williams, take some one illustrative case and read what your tabulation shows, the head line and the indices, whatever you have there which shows what it means.

Mr. Williams: I have a claim here from Mrs. C. Adair. I find that on Exhibit No. 1, which was filed here last September, the Santa Fe Railroad had checked 135 cars, being their claim
456 numbers three to six, and that the overcharge figured by them on the weights and the car numbers given, was $918.69. On the second exhibit, which was filed in January here, we had sixteen cars against the Santa Fe, their claim numbers one and two of that hearing, and the overcharges fixed by them were $110.16, making a total of the two exhibits, for the Santa Fe, of 151 cars, or $1,028.85 overcharge" (293-294-295-296).

In view of the foregoing testimony and statements which this court did not refer to in its opinion and which may have escaped the notice of the court, it seems clear to us that there was evidence to show that:

1. All the shipments were made to commission houses for sale on the market for the owners.

2. That the commission houses paid the freight on the cattle, deducted it from the proceeds of sale and remitted to the owner the balance of the proceeds of sale.

3. That the commission houses' books showed the names of the actual owners of the cattle and not the caretakers.

4. That the commission companies furnished to the Cattle Raisers Association slips showing only the names of the owners, the number of cars, date of delivery of shipment, point of origin, destination, weights and delivering carrier, and freight paid.

5. That Mr. Cowan, attorney for the claimants, knew this custom of the commission companies and stated it as a fact and that the commission houses had furnished such statements.

6. That Mr. Williams heard Mr. Cowan's statement and testified under oath that it was true—that Mr. Williams knew of his own knowledge such custom of the commission houses and testified to it.

7. That Mr. Brooks, live stock agent of the Santa Fe Railroad, knew such custom and so stated it to the Commission (p. 235):

"Mr. Cowan: Now, Mr. Brooks, your billing will show the name of the caretaker?

Mr. Brooks: Yes, sir.

Mr. Cowan: Your billing does not show the name of the owner?

Mr. Brooks: No.

Mr. Cowan: The commission companies' books, however, do show the name of the owner?

Mr. Brooks: Yes."

457 8. That Mr. Norton, attorney for the Santa Fe, at the second hearing, when Mr. Cowan offered to call Mr. Moore, bookkeeper for Evans-Snider-Buel Company, a commission company doing a very large business, and who had the books of that company present in order to prove the custom and course of procedure, Mr. Norton, attorney for the Santa Fe, said:

"I think that was stated in the other hearing—I think our own live stock agent stated that."

"Mr. Cowan: I think he did."

9. That lists of all the claims showing the names of the owners were furnished the carriers which checked the same; that Mr. Fletcher, one of the counsel for the carriers, requested that filing of the list be withheld temporarily for the purpose of allowing the carriers to check the names of the owners as furnished on the list with the names of the consignors as shown by the carriers' books, which was done (284-5).

10. That it was repeated over and over again during the course of the hearing before the Commissioner, by the Commissioner, by counsel for the claimant, and by the witness Williams as to the custom and course of procedure of the commission houses—that they paid no attention to the name of the caretaker—that their account books were kept in the name of the owner only—that the names of the owners only were furnished to the Cattle Raisers Association—that in the list of claims no names except the actual owners were shown—that the freight was paid by the commission companies and charged to the owners, deducted from the proceeds and balance remitted to the owners—that claimants offered to produce the books—offered to have them examined—that the reason the books were not examined was because the railroads checked the claims and admitted the movement of the freight as stated and the Commissioner understood from the admissions made that the only question left open was whether the shippers were damaged. That counsel for the carriers admitted that was the course of business (279). That no denial was made of the statements made, and no objections raised at that time, and not till the close of the hearing.

Therefore unless this court means by its opinion that all such statements and testimony shall be disregarded and not considered at all, we respectfully submit the court has erred in saying there was "no proof of such custom" and that the evidence "fails to show who owned the cattle shipped or who paid the freight" and that
458 the information furnished by the commission houses showed "the shipment of cattle, not by the owner, and therefore damaged by the payment of the unlawful rate, but simply that a certain person shipped cattle." The court perhaps has not fully comprehended that the record shows clearly that the caretakers' names were not in the list of shipments checked. The claimants did not fur-

nish the names of any caretakers, but only of the owners in the lists handed to the railroads for checking. Where the owner's name as furnished was also the name in the billing, the railroads were able to find the record of the shipments in their records, but where the shipments were in the name of the caretaker, the railroads failed to find a record of such shipments and therefore they were not checked by the railroads and those shipments are not included in the order of reparation. Some of the railroads checked the names of the consignor and consignee, as well as the rest of the information given on the lists furnished them. The Santa Fe did not (p. 300), the M. K. & T. did (p. 305), the C. & A. did (p. 306), the C. & E. I. did (p. 307), the Illinois Central did (p. 307), and in nearly every instance the checking showed the billing of the railroads corresponded with the list furnished which gave the name of the owner as consignor.

To reject all such statements and testimony is not this court setting aside that part of the Interstate Commerce Act, Sec. 13, which empowers "the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper," and Sec. 17, "That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice;" and is not the decision of this court in its holdings herein in direct conflict with the opinion of the U. S. Supreme Court in L. & N. R. R. v. Finn, 235 U. S. l. c. 606-608-609?

It is true this court has not overlooked that case and has quoted from its opinion, but it seems this court has failed to notice that in the Finn case the appellants contended, first, that the rate order is invalid because not supported by substantial evidence, and second, that the reparation order is invalid for the same reason. Upon the first question the U. S. Supreme Court said:

"At the hearing a Mr. Goodwyn was produced by the company and made a statement of the facts in its behalf—not under oath, but it was received in evidence in behalf of the company. * * *

There was some other evidence, but not very much, that bore
459 directly upon the reasonableness of the rates; and it should be said that full opportunity was afforded to the railroad company to adduce such evidence as it desired" * * * "As to the reparation order it is further insisted (*a*) that there was no evidence before the Commission to show that the several parties to whom reparation was awarded had paid freights based upon the rates complained of, or to show the amounts of their payments or to show that the difference in the freight payments represented damages to which they were entitled."

The court then after showing what the answer contained set forth the colloquy between counsel as to the claims. In that case in order to hold that the rates were unreasonable the court considered the statement of Mr. Goodwyn made before the Kentucky Commission, but not under oath. It considered the colloquy between counsel, which coupled with the answer of the railroad company, it held "in effect conceded that the particular amounts claimed were proper to be awarded as reparation." We cited that case in our former

brief and we cite it here as a precedent for asserting that in proceedings before the Commission statements of counsel and other parties before the Commission, although not under oath, are receivable as evidence and considered in determining whether there is any evidence to support the findings of the Commission, and it certainly so holds.

What the pleadings were in the proceedings before the Commission in the case at bar does not appear. For aught we know the railroads may have denied liability on the same grounds as the defendant did in the Finn case. We do know they conceded the shipments were made and the freight at the rate deemed unreasonable was collected. We do know that some of the defendants conceded the names of the consignor and consignee given on the list furnished by the claimants agreed with their own records, and that the claimants named only the owners as consignors in that list. We know that their own live stock agent admitted the custom of the commission companies was to show on their books the names of the owners of the cattle shipped and sold. We do know the defendants made no objection to the character or competency of the proof offered when offered, and only objected to the sufficiency and competency at the close of the hearing before the Commissioner. We do know that under the law applicable to the Interstate Commerce Commission its proceedings are conducted in an informal manner and "it is not limited by the strict rules as to the admissibility of evidence which prevail in suits between private parties." I. C. C. v. L. & N. R. R., 227 U. S. 93. We do
460 know, as stated in the Finn case, "full opportunity was afforded to the railroad company to adduce such evidence as it desired." "There is nothing to show that it has or could have any defense to the payment of the reparation that it has not already either interposed or waived in the proceedings before the Commission."

If, as this court says in its opinion, "So far as the Commission is concerned counsel engaged in the conduct of such proceedings are not required to preserve and protect their rights with the watchful nicety that would be required in the courts of justice;" that is to say, as applied to the record in this case, if statements of the Commissioner and of counsel that such are the facts and if not objected to will be taken as admitted and found as facts, and no objection is made, then instead of broadening and liberalizing the practice and procedure before the Commission, the court narrows it and makes it far more important to make strict proof according "to the narrow rules which prevail in trials at common law."

But if the rule as announced by this court is to prevail, then it should work both ways and apply to all parties, and when applied to the claimants and the record in this case, the words of Judge Van Valkenburgh in his opinion in deciding the case below seem appropriate. "The Commissioner, himself a trained lawyer, after reviewing the record as made, was of opinion that the evidence sustained the findings he made and after a very critical examination, and that deliberate consideration made necessary by the earnest insistence

of counsel, I am constrained to agree with the Commissioner." * * * The entire record discloses an acquiescence on the part of the defense upon this asserted course of business dealing, as well as in some cases, statements amounting to admissions; the Commissioner felt that upon the entire record the situation sufficiently appeared, in the absence of rebuttal, and so I think it did for the purposes of a hearing of this nature." "Upon the making of a prima facie case before the Commissioner, as in this court, it was open to the defense to cross examine the witnesses produced, to produce witnesses on their own behalf and otherwise to present such matters of defense as might be deemed necessary and advisable."

The findings of the Commission on all questions of fact, if based upon evidence are conclusive.

U. S. v. L. & N. R. R., 235 U. S. 314, 320.
I. C. C. v. L. & N. R. R., 227 U. S. 88.
I. C. C. v. Ill. Cent. R. R., 215 U. S. 452.
I. C. C. v. Del. L. & W. R. Co., 220 U. S. 235.

461 "And the amendments by which it came to pass that the findings of the Commission were made not merely prima facie, but conclusively correct in case of judicial review, except to the extent pointed out in the Illinois Central and other cases, supra, show the progressive evolution of the legislative purpose and the inevitable conflict which exists between giving that purpose effect and upholding the view of the statute taken by the court below."

U. S. v. L. & N. R. R. Co., 235 U. S. 314, 320.

"The value of evidence in rate proceedings varies, and the weight to be given to it is peculiarly for the body experienced in regard to rates and familiar with the intricacies of rate making."

I. C. C. v. L. & N. R. R., 227 U. S. 88.

In the Illinois Central and other cases referred to, supra, it was determined "whether an order of the Interstate Commerce Commission shall be suspended or set aside power to make—and not the wisdom of the order is the test."

The power of the Commission to make the order in the present instance is not questioned except upon the ground that there was no evidence before the Commission to support it. If there was any evidence, no matter how slight, then the question of fact so found by the Commission is concluded and is not subject to judicial review. Upon the record made before the Commission in this case, can it be said there was no evidence upon which to base the findings? This court, we earnestly submit, is not concerned with the character or competency of the evidence, you are not called upon to determine questions of admissibility of evidence or as to whether it is hearsay or secondary, but only whether there is any evidence adduced before the Commission upon which to base its findings and keeping in mind that the Commission is empowered by Congress "to conduct proceedings in such manner as will best conduce to the proper dis-

patch of business and to the ends of justice and is not confined to the narrow rules of evidence," can it be said there was no evidence to support the findings of the Commission? Surely not.

"When the findings of fact of the Commission are concurred in by the lower federal court, the appellate court will not disturb them unless the record establishes that clear and unmistakable error has been committed."

Cin. etc. R. Co. v. I. C. C., 206 U. S. 142-154.
C. N. O. & T. P. R. Co. v. I. C. C., 162 U. S. 184-194.
L. & N. R. Co. v. Behlmer, 175 U. S. 648, 672.
Ill. Cent. R. Co. v. I. C. C., 206 U. S. 441.

For this reason we earnestly urge the court to grant a rehearing.

462 II.

This court has apparently overlooked or failed to note the point made at page 101 of brief of defendant in error that the shippers being in possession of live stock when delivered to the carriers were presumed to be the owners—and in the absence of proof to the contrary, they were prima facie such owners. We cited many authorities in support of this proposition which seems to us worthy of consideration.

The shipments for which the order of reparation was made were made in the names of the owners as consignors; all shipments in the names of caretakers were rejected and no order made for them, and all of the railroads, excepting the Santa Fe, in checking the shipments checked also the names of the consignors. Although the Santa Fe did not check the names of the consignors, yet it appears that the reason that road could not find a record of about 1,000 cars out of 5,000, was because the cars not found must have been billed in the names of the caretakers. Those found and checked were billed in the names of the owners furnished on the list and shown in Appendix A. Hence the consignors were in possession of the cattle at the time of shipment, and the presumption of law is, they were the owners, in the absence of any proof to the contrary. We cited many authorities at pages 102 to 105 of our brief in support of this proposition. The assignments were all made by the persons appearing on the list shown in Appendix A as the consignors, therefore it appears that the consignors were the owners who made the shipments and who made the assignments. A consignor has the right to prosecute an action for damages against a carrier whether he is the owner of the goods or not and therefore he has the right to assign the same.

Atchison v. R. R., 80 Mo. 213.
Ross v. C. R. I. & P., 119 Mo. App.
Carter v. R. R., 111 Ga. 38.

III.

Another point that has apparently escaped the attention of the court is, that the carriers cannot question the title of the consignors

because the carriers were bailees. This is abundantly shown by the following authorities:

"A carrier, like any other bailee, must respect the apparent ownership of the shipper from whom he received possession, and cannot question the shipper's right to the goods, in case the transac-
463 tion is not such as to import a transfer of title to the consignee, although as matter of fact the shipper is not the real owner."
6 Cyc. 434-5.

"The general rule is that the carrier like any other bailee is not at liberty to dispute the title of the consignor from whom it receives articles of shipment in an action brought by him, the reason usually assigned being that, if the contrary doctrine prevailed, the carrier might by setting up title in some third person keep the property for itself."

10 Corp. Juris. 229, Sec. 318.
Hentz v. The Idaho, 93 U. S. 575.
Denver, etc. R. Co. v. Frame, 6 Colo. 382.
Carter v. Southern R. Co., 111 Ga. 38.
Great Western R. Co. v. McComas, 33 Ill. 185.
Valentine v. Long Island R. Co., 92 N. Y. Supp. 645.
Western Transp. Co. v. Barber, 56 N. Y. Supp. 44.
Atchison v. Ry. Co., 80 Mo. 213.
Ross v. Ry. Co., 119 Mo. App. 290.

The evidence in this case and conduct of the parties before the Commissioner is sufficient to show that the cattle in question were all shipped for sale on the market by the commission companies for the benefit of the shippers and therefore the presumption of title being in the consignee is overcome and that leaves the presumption that the consignor is the owner with the right to sue for damages in full force. This proposition was not passed upon by this court. Com. Club of Omaha v. A. & S. R. Co., 27 I. C. C. 302, 322. It seems to us worthy of consideration, and is sufficient in law to show who were the owners and who paid the freight and therefore who were damaged and the assignments having been made by such consignors, the legal title was vested in Spiller with the right to recover the damages suffered.

IV.

This court erred in holding:

a. There was not sufficient evidence to show the claims were legally assigned to Spiller and if there were

b. "the evidence showed the purpose of the assignment was not such as to vest the legal title in Spiller so as to authorize the Commission to make the award of damages to him."

The last proposition was not made in the court below and for that reason should not be considered here.

464 The defendants did urge in the court below and in their brief here that such claims are in their nature personal and not assignable, and they did urge that there was no proof of the as-

signments—but not until this court announced its opinion herein has the question been raised in the case that the assignments did not vest the legal title in the assignee.

The court has fallen into error about the facts concerning the assignments. This court says: "Some of the claims if assigned at all were assigned to Crowley, others to Spiller, others still, and it did not appear which ones, were simply placed with the Cattle Raisers Association for collection." The record discloses exactly what claims were assigned to Crowley, also that all such claims were assigned by Crowley to Spiller. Also the record shows exactly what claims were assigned to Spiller. It also shows exactly what claims were not assigned. Appendix A shows those facts by the letter C or letter S, or by the absence of those letters. Claims not followed by C or S. were not assigned at all (Record pp. 314-315). Such claims not assigned were allowed and order made for reparation in the name of the owner and shipper, and suit was brought in their names, over two hundred and fifty names of plaintiffs, of which E. B. Spiller was one because a few of those claims were assigned to him after reparation order was made. Those claims are sued on in case 4320; against the M. K. & T. R. R. Co. and all the other railroad defendants. Case 4308, being the case before this court, is one in which Spiller only is plaintiff on the claims assigned to him or Crowley before the order was made. Mr. Cowan and the Cattle Raisers Association represented the owners of the claims not assigned, as much as they did those that were assigned. They were requested so to do, and their authority so to do has never been questioned by anybody. As stated the order of reparation as to those claims not assigned was taken in the names of the owners. None of those claims are involved in this case. They are involved in case No. 4320 tried below and by agreement awaiting the decision of this case.

a. The evidence as to the assignments was fully set forth at pages 53 to 57 of our original brief herein and at pages 314 to 321 of the record. From such testimony it appears that all of the assignments were at hand at the hearing and Mr. Cowan stated he would file them. They were all tendered, one of them was read into the record. They are absolute in form and all alike except as to the signature. Mr. Williams testified he knew as a fact they had been made and signed

"by the person in authority to do so." The assignment of
465 Mrs. Adair was produced, the assignment from Crowley to Spiller was produced. To have offered and proven each one separately would have taken a good deal of time. It was apparently and naturally the desire of all parties to expedite matters and save unnecessary labor. So the Commissioner said: "I take it, gentlemen of the defense, it would not be your desire to put Mr. Cowan to the necessity of making proof in each individual case. There is no doubt about it, I suppose, and we will find, unless there is some objection, that this assignment was regularly made by the person purporting to execute it." This court says, "the remarks of the Commissioner related only to the assignment of the claims to Mrs. Adair."

But that this court is wrong in that construction is shown by the language of the Commissioner in referring "to the necessity of mak-

ing proof in each individual case," and later the Commissioner said, "I don't think you need to go into that; unless there is some objection we will find the fact of the assignment according to the language of the assignment itself in all these cases where an assignment has been made, and you indicate in whose favor the order should be made in all cases." As the lower court said:

"No objection was recorded to these suggestions of the Commissioner. On the contrary, the examination by Mr. Humberg, of counsel for defense, at page 321 of the record before the Commission discloses acquiescence in the suggested abridgment of the formal proofs. Such things are common in courts of law in the interest of economy of time and labor, and still more so in more informal proceedings before Commissions. It is true that at the end of the hearing the defendants interposed objections as to the sufficiency of the proof, but after such an attitude assumed in the course of the trial, courts generally would not entertain such an objection as reaching an offer of this kind, proposed for convenience and acquiesced in by counsel at the earlier stage of the proceedings. It is apparent that counsel for defendants were at that time laying greater stress upon the non-assignability of the claims than they were upon the forms of the assignment made. The record as a whole, but further strengthens the conclusion reached. The Commission was not without evidence upon which to find that there were valid assignments of the claims sued on made by the parties in interest, ultimately to the plaintiff, Spiller."

This court says "the witness Williams in the very nature of things could not know that over two thousand shippers and claimants had assigned their claims to Crowley and Spiller." Why not?
466 He had them all in his possession. He was the man who attended to the whole matter for the Cattle Raisers Association. He was the man who sent out the assignments to be made "by the person in authority," and so far as shown he knew the signatures. But in making the above statement this court passed upon the credibility of the witness and not upon whether there was evidence to support the finding. We have always understood this court would not pass upon the credibility of the witnesses nor the weight of the testimony—that if there was any evidence to support the finding of the lower court it would be upheld. "In a case like the present, the courts will not review the Commissioner's conclusions of fact by passing upon the credibility of witnesses or conflicts in the testimony. I. C. C. v. L. & N., 227 U. S. 88, 92." This court says:

"We are of opinion that when a carrier is cited to show cause why it should not be adjudged to pay damages for collecting an unjust rate, it cannot be so adjudged by being told if no objection is made the Commission will proceed and award them."

Is the illustration analogous?

The question is as to proof of the assignments, not as to proof of damages, therefore, the illustration does not seem to us to be in point.

We concede that damages must be proven in some way, to what

extent and in what way is for the commission, subject to the limitations prescribed by the Act of Congress, to determine, and surely this court does not mean that the usual practice and custom prevailing in courts of law in order to save time and labor and to expedite matters, to make a statement of facts without formal and strict proof thereof, concerning matters that do not pertain to the principal issues in the case, if the parties in interest do not object when called upon, is not to apply to proceedings before the Interstate Commerce Commission.

"It is a trite, but nevertheless a very equitable saying, if a party will not speak when he ought to, he will not be heard when he wants to speak. If no objection be made, the other party is well justified in supposing that it is not intended to be made."

Gregary v. Dodge, 14 Wend. 593-617.

As an illustration, in the trial below of case No. 4320 against the M. K. & T. and these same defendants, the plaintiff introduced the assignments to Spiller of claims involved in that suit, made after the order of reparation—there were only a few of them—defend-
467 ants waived formal proof of the signatures, and they were received in evidence without objection. But according to the ruling of this court we could not depend upon that waiver.

We therefore urge this court to reconsider the holding upon this question.

B. This court says the legal title was not vested in the plaintiff, Spiller. In considering this question we may concede for the moment that the assignments were all for the benefit of the owners and shippers of the cattle. Does that prevent the vesting of the legal title in Spiller? This question was not presented to the lower court, and of course, it ought not to be considered by this court —yet this court has based its decision upon this branch of the case upon this proposition. Besides, this question as to the assignments being champertous or savoring of maintenance was not pleaded nor raised in the lower court.

We briefed and argued the question that such claims are assignable, and as this court has not touched upon that point in its opinion we may presume this court considers the claims were assignable. In 4 Cyc. p. 67, it is said:

"When a chose, capable of legal assignment is assigned absolutely to one, but the assignment is made for the purpose of collection, the legal title thereto vests in assignee, and it is no concern of the debtor that the equitable title is in another. The assignee may prosecute an action thereon in his own name."

5 Corpus Juris, 958.
Greig v. Riordan, 99 Cal. 316.
Ballinger v. Vates, 26 Colo. St. 116.
Denver Eng. Works v. Elkins, 179 Fed. 922.

And at page 69 of 4 Cyc., it is said:

"An unqualified assignment of a chose in action carries with it,

as incident to the chose, all securities held by the assignor as collateral to the claim and all rights incidental thereto."

George v. Tate, 102 U. S. 564.
Winstead v. Bingham, 4 Woods (U. S.) 510.
5 Corpus Juris 958, Sec. 145.
Cowdrey v. Vandenburgh, 101 U. S. 572.
Western Union Tel. Co. v. Western, etc., 91 U. S. 283.

At page 71 of 4 Cyc., it is said:

"As the rights to the chose and its incidents pass to the assignee thereof, so does the right to the remedies which the assignor had for the enforcement of the same."

5 Corpus Juris 961-2 and cases cited.

468 So at pages 99 and 100 of 4 Cyc., it is said:

"Where an assignment of anything in action is absolute in its terms, so that the entire apparent legal title vests in the assignee, the assignee may sue in his own name without joining the assignor as a party, although there was no consideration for the assignment, and notwithstanding whatever collateral arrangements exist between him and the assignor as to the disposition to be made of the proceeds, the assignment being a complete protection to the assignor. And this has been held although the chose was assigned as collateral security merely."

5 Corpus Juris, 985.
Pomeroy's Remedies & Rem. R., Sec. 132.
Withers v. Greene, 9 How. 213.
Scott v. Lunt, 7 Pet. 596.
And many cases cite note 99, p. 985 of 5 Cor. Jur.

In 5 Corpus Juris, 994, Sec. 199, it is said:

"Consideration for assignment. The general rule is that the reasons and considerations for an assignment, or the object sought to be attained thereby, will not be inquired into in an action by the assignee, but that the action is properly brought by the assignee as the real party in interest if the assignor has transferred all apparent interest and title in and to the subject matter, although the assignee may be only an agent or trustee, and others may be beneficially interested."

Citing, among others:

Marvin v. Ellis, 9 Fed. 367.
Krapp v. Elcridge, 33 Kan. 106.
Cottle v. Cole, 20 Iowa, 481.
Guerney v. Moore, 131 Mo. 650.
Foster v. Central Nat. Bank, 138 N. Y. 379.

Reason for the Rule.

"By the assignment he becomes the real party in interest, because he has a valid transfer as against the assignor and holds the legal title to the demand."

King v. Miller, 53 Ore. 53-62.

"If as between the assignor and assignee the transfer is complete, so that the former is divested of all control and right to the cause of action, and the latter is entitled to control it and receive its fruits, the *assignee is the real party in interest*, whether the assignment was with or without consideration, and notwithstanding the assignee may have taken it subject to all equities between the assignor and third persons.

Cummings v. Morris, 25 N. Y. 625.

Chase v. Dodge, 111 Wis. 70.

469 An assignee for collection is trustee of an express trust.

Coffman v. Saline Valley R. Co., 183 Mo. App. 622.

Howe v. Mittelberg, 96 Mo. App. 490.

"An assignment of a claim for collection is an assignment for value and vests such an interest in the assignee as entitles him to sue thereon in his own name."

The Rupert City, 213 Fed. 263.

"Where an assignment of a chose in action is absolute, the assignee is as to the debtor, the real party in interest although the assignor is to receive the proceeds."

Sheridan v. New York, 68 N. Y. 30.

Allen v. Brown, 44 N. Y. 228.

Sec. 13 of the Interstate Commerce Act contemplates the prosecution of matters before the Commission by other persons than the real parties in interest.

The Commission itself has held that an assignee may be awarded damages.

Jubitz v. S. P. Co., 27 I. C. C. 44.

Sec. 16 of the Act provides for joining in one suit all parties, plaintiffs and defendants, to recover the damages suffered, thus providing a new procedure formerly unknown to the practice, and this section further provides that "the complainant or any person for whose benefit such order was made" may file suit to enforce the order. It was suggested in the reply brief of the carriers that the assignments were champertous. There is absolutely nothing in the record on which to base that statement.

E. B. Spiller, the claimant, is Secretary of the Cattle Raisers' Association of Texas, of which the owners of the cattle shipped are members. As such members they prosecuted the matter before the Commission in the name of the Association instead of individually as provided by Sec. 13 of the Act, and assigned their claims to Spiller to obtain reparation. The assignments conveyed property.

"When property is conveyed the fact that the grantee may be compelled to bring a suit to enforce his right to the property does not render the conveyance void."

Edmunds v. Ill. Cent. R. R., 80 Fed. 78.

470 From the above authorities it seems clear to us that this court has committed an error in holding that the legal title

did not vest in Spiller. The assignment was absolute in form—and inasmuch as no objection was made to it on the ground that the legal title did not pass, either before the Commission or the lower court, we respectfully but urgently ask this court to reconsider its opinion and grant a rehearing.

V.

We come now to the measure of damages. This court affirms that the measure of damages is not the difference between the rate condemned and the rate found by the Commission to be reasonable. In so finding this court in effect overrules a large number of previous holdings of the Commission and of the courts awarding damages on that basis. Is this court right on that proposition?

Meeker v. Lehigh Valley, 236 U. S. 412.
In re Wool, Hides & Pelts, 25 I. C. C. 675, 677.
L. & N. R. R. Co. v. Finn, 235 U. S. 601.
Burgess v. Trans-Continental Freight Bureau, 13 I. C. C. Rep. 668-680.
Wallingford v. A. T. & S. F. R. Co., 30 I. C. C. 19-21.
Hoover, etc., Co. v. C. H. & D. R. Co., 31 I. C. C. 550-552.
Cudahy Packing Co. v. A. T. & S. F. R. Co., 32 I. C. C. 560, 563. Omaha Grain Exchange v. C. & A. R. Co., 32 I. C. C. 597-600. Dupont Powder Co. v. L. & N. R. Co., 33 I. C. C. 288-290. Nat'l Wool Growers Assoc. v. R. R., 25 I. C. C. C. 675.
Darnell-Taenzer Lumber Co. et al. v. Southern P. Co., 221 Fed. 890, 894.
St. Louis S. W. Ry. Co. v. S. Samuels & Co., 211 Fed. 588-594.
Osborne v. C. & N. W. Ry. Co., 48 Fed. 49.
N. Y., N. H. & H. R. Co. v. Ballou, 242 Fed. 862.

The last four cases were not cited in our former brief.

As shown by Justice Pitney in his vigorous dissenting opinion in Penn. R. R. Co. v. Coal Co., supra, the holding of the court in that case, even upon the question of damages caused by discrimination that the measure of damages was not the difference between the rates paid by the claimant and the rebate allowed the
471 favored shippers ignored "the practical construction that has invariably been placed upon the act by the Interstate Commerce Commission." He quoted from the opinion of the Commission in Burgess v. Freight Bureau, 13 I. C. C. 668-680, as follows:

"These complainants were shippers of hard wood lumber to this destination, and they were entitled to a reasonable rate from the defendants for the service of transportation. An unreasonable rate was in fact exacted. They were thereby deprived of a legal right, and the measure of their damage is the difference between the rate to which they were entitled and the rate which they were compelled to pay. If complainants were obliged to follow every transaction to its ultimate result, and trace out the exact commerical effect of the freight rate paid, it would never be possible to show damages with

sufficient accuracy to justify giving them. Certainly these defend ants are not entitled to this money which they have taken from the complainants and they ought not to be heard to say that they should not be required to refund this amount because the complain ants themselves may have obtained some portion of this sum from the consumer of the commodity transported."

And then the learned justice said:

"It is upon this theory that reparation has been awarded by the Commission from the beginning. After an examination of the reports of their decisions as exhaustive as the time at my disposal would permit, I think it entirely safe to say that in the thousands of reparation cases that have been passed upon, reparation has not been refused under circumstances at all resembling those of the case at bar. And that wherever reparation has been allowed it has been based upon the rate differential and awarded to the shipper who paid the freight, without regard to whether or not he charged it over against his consignee. This same rule has been adopted in all cases, whether the rates charged to the complainant had been deemed unreasonable per se or not; indeed, where they have been thus denounced it has ordinarily been done as the result of com parison between the rate under attack and other rates on similar traffic. Illustrative cases are cited in the margin."

The cases cited in the margin are as follows:

"Reparation by reason of published rates held unrea-able becaus discriminatory, irrespective of whether they were otherwise extor tionate:

12 I. C. C. 418-426.
14 I. C. C. 422-434.
14 I. C. C. 523.
16 I. C. C. 528.
17 I. C. C. 578.
472 18 I. C. C. 259.
18 I. C. C. 212-219.
18 I. C. C. 550.
18 I. C. C. 580."

"By reason of published rates held unreasonable because in exces of rate voluntarily established by the carrier.

12 I. C. C. 13.
12 I. C. C. 141.
14 I. C. C. 118.
14 I. C. C. 577.
16 I. C. C. 190-192.
16 I. C. C. 293.
16 I. C. C. 450.
20 I. C. C. 104."

"By reason of published rates held unreasonable because in excess of rates afterwards established by the Commission."

12 I. C. C. 417.
14 I. C. C. 199-205.
17 I. C. C. 251-253.
17 I. C. C. 333.
18 I. C. C. 301.

"By reason of published rates held unreasonable per se."

14 I. C. C. 525.
14 I. C. C. 577.
16 I. C. C. 469.
20 I. C. C. 12.
20 I. C. C. 104.
22 I. C. C. 283.

Then Justice Pitney says:

"The sheer impossibility of adapting any other measure of damages, in the multitude of reparation cases that the Commission has to deal with, is perfectly obvious. The result upon the whole, is a virtual denial of private remedy for the most common and harmful of these discriminations that the Interstate Commerce Act was designed to prevent and redress."

How much more applicable are the words of Justice Pitney in that case involving damages caused by discrimination to the case at bar involving reparation for damages caused by the exaction of an unlawful rate? Especially where the Commission has found "after a full hearing" that the rates paid were unreasonable and also found what would have been a reasonable rate at the time of the shipment. How else can the damages be proven? What better or more equal measure of damages can be found? It should be kept in mind that the decision in Penn. R. R. Co. v. Coal Co., is based upon damages
473 claimed for unlawful discrimination by giving a favored shipper a rebate. That case does not attempt to deal with damages caused by an unreasonable rate.

Other decisions of the I. C. C. upon the measure and proof of damages were cited by us at page 106 of our brief, which apparently this court has entirely overlooked.

In Darnell-Taenzer Lumber Co. v. S. P. R. Co., 221 Fed. 890-894, this precise question was passed upon by the Circuit Court of Appeals of the Sixth Circuit. The suit was for reparation under Sec. 16, for an unreasonable rate charged on shipments of lumber from Memphis, Tenn., to California points. Defendants pleaded that the plaintiff had not been damaged. On a trial by jury in the lower court a verdict was directed for defendants. The direction of the verdict was defended "On the ground of utter lack of evidence that plaintiffs suffered damages." The court, after quoting from decisions of the Commission in the Burgess case, 13 I. C. C. 688, and other cases, said:

"Since the foregoing decisions of the Commission the Supreme Court has held, in a case involving discrimination in rates as between

competing shippers, that the damage recoverable by the shipper against whom the discrimination is practiced must be proved; that the damages are not necessarily measured by the difference between the published rate paid by the complaining shipper and the lower rate given to a more favored shipper, but may be more or less than such difference. Penna. R. R. Co. v. International Coal Co., 230 U. S., 184, 203, 33 Sup. Ct. 893, 57 L. Ed. 1446. While the Commission applies this rule in discrimination cases (New Orleans Bd. of Trade v. Illinois Central R. R. Co., 29 Interst. Com. Com'n R. 32; Spiegle v. Southern Ry. Co., 32 Interst. Com. Com'n R. 687) it has never in cases of purely unreasonable and excessive rates departed from the rule announced in the Burgess case. A few of the many cases, subsequent to the International Coal Co. case, in which the rule in the Burgess case has been applied by the Commission are cited in the margin. While the Supreme Court in the Meeker cases reaffirmed the rule that damages in reparation cases must be proved, that court, so far as we have seen has not passed directly upon the proposition involved in the Burgess case and in the instant case; the nearest approach thereto being the holding in the Meeker cases; that the Commission did not apply 'An erroneous or inadmissible measure of damages,' in finding that the shippers were damaged to the extent of the difference between what they actually paid and what they would have paid under a reasonable rate. In the Meeker cases no evidence of damages was presented except the Commission's findings, and the evidence on which the Com-
474 mission acted did not appear. We find nothing in either the International Coal Co. case or the Meeker cases conflicting with the view that damages resulting from the imposition of unreasonably excessive rates are normally measured by the difference between the rate charged and a reasonable rate. Cases of excessive and unreasonable rates differ from discriminating charges in the fact that in the latter there is nothing unlawful in the charging and receiving of the higher or published rate on which the demand for reparation is based; the unlawfulness is in giving a lower rate to some one else. On the other hand, the charging of an excessive and unreasonable rate is ipso facto unlawful. We think the payment by the shipper of excessive and unreasonable freight charges naturally imports legal damage to the shipper therefrom, and that the rule as to the measure of damages applied by the Commission is a reasonable interpretation of the statute as applicable to reparation cases, to the extent of making payment of unreasonably excessive freight charges presumptive evidence of damage to the shipper to the extent of such excessive charges, and that the presumption of damage afforded by such payment cannot be overcome by anything short of definite proof—not resting upon uncertainty or conjecture—negativing the fact or the amount of damage. As said by the Commission in its first report in the Burgess case, 13 I. C. C. p. 680: 'If complainants were obliged to follow every transaction to its ultimate result, and to trace out the exact commercial effect of the freight rate paid, it would never be possible to show damages with sufficient accuracy to justify giving them.' In our judgment, a rule requiring the shipper to mathematically

demonstrate that it was actually pecuniarily damaged to the amount of the unreasonable excess in rates so paid would effectually emasculate the reparation provision of the Interstate Commerce Act. We, therefore, think it clear that the Commission's statement that the excessive freight rate had been added to the price paid by the consumer did not, as a matter of law, and in view of the other considerations referred to by the Commission, overcome the prima facie effect of the findings that plaintiffs were damaged to the extent of such excessive freight rate actually paid by them."

The authorities cited on the margin are as follows:

Wallingford v. A. T. & S. F. R. R. Co., 30 Interst. Com. Com'n, 19-21.

Hooven et al. v. C. H. & D. Ry., 31 I. C. C. 550-552.

Cudahy P. Co. v. A. T. & S. F. R. Co., 32 I. C. C. 560, 563.

Omaha Grain Exchange v. C. & A. R. Co., 32 I. C. C. 597, 600.

Dupont De. Nemours Powder Co. v. L. & N. R. Co., 33 I. C. C. 288, 290.

475 In St. Louis S. W. Ry. Co. v. S. Samuels & Co., 211 Fed. 588, 593, the U. S. Circuit Court of Appeals of the Fifth Circuit said:

"The finding of the Commission that the rate charged Samuels & Co. was unreasonable, and fixing the excess over a reasonable rate, is, under the law, prima facie correct, if not conclusive; and, as no evidence to the contrary was offered on the trial and both parties asked for a peremptory instruction, there was no error in directing a verdict for the plaintiff."

Mr. Wood, who appeared for the Frisco Railroad before the Commission at the first hearing, after referring to the need of proving the shipments and that a certain freight rate was charged, said: "Then it follows as a matter of course that if that freight rate were charged and that specific rate was unreasonable to the extent of three cents a hundred pounds, and a reparation is ordered on any shipment, reparation will be awarded in that amount, but is seems to me that all of these other things other than the payment of some freight by a commission company to a railroad company in Kansas City or St. Louis are an essential part of Mr. Cowan's case" (Record p. 258).

Then Mr. Wood suggested "a short cut method of establishing the amounts enumerated in these statements, that instead of having subpoenas issued and bringing the way bills and everything else before the Commission, if he wants some short cut method of that sort, that he should arrange to see that what is ordinarily furnished, that is, the car numbers and the dates of shipment and such description of the shipments, is supplied us so that they can be checked. I assume that when we do that we have helped him to make his case, but I have no objection to helping him make his case in that manner" (259).

"These other things" were furnished and Mr. Woods' suggestion was followed, except as to car numbers, which could not be furnished

by the claimant, but the list furnished to the railroads gave all other information except the car numbers and they were checked by the carrier and found correct. Now there was a direct admission by one of the carriers speaking through its counsel, that the difference between the rate condemned and the rate found reasonable was the proper measure of damages. But this court says "to grant reparation based upon the difference in rates would in effect be to grant reparation for 4 years, two months and twenty-one days, and the statute limits the power of the Commission to fix rates for the future to two years."

476 The Act of Congress must of course by construed as a whole—the court will endeavor to harmonize all sections of the act.

Sec. 1 provides that every unjust or unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

Sec. 8 provides that "in case any common carrier subject to the provisions of this act shall do, cause to be done, or permit to be done, any act, matter or thing in this act prohibited or declared to be unlawful * * *, such common carrier shall be liable to the persons injured thereby for the full amount of the damages sustained in consequence of any such violations, etc."

Sec. 14 provides "and in case damages are awarded such report shall include the findings of fact on which the award is based."

Sec. 16. "The Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named."

If the Commission finds the rate charged unreasonable and finds what was or would have been a reasonable rate to charge at the time of such shipment and that the shipper is damaged to the extent of the difference, is that fixing the rate for the future for more than two years? The Commission undoubtedly has the power to award whatever damages were suffered. Perhaps they might be more or less or the same as the difference between the rates, but whatever they are, the Commission has the power to award them. Can it be said then that if the Commission finds the damages suffered are the same as the difference between the rates, that it cannot award them because that would in effect be prescribing a rate for more than two years? If so, then the court in effect annuls those provisions of the act providing for the award of damages and the decision is in direct conflict with the decision of the U. S. Supreme Court in the cases cited at page 29 of our former brief, viz:

Texas & P. R. Co. v. Abilene Oil Co., 204 U. S. 426.
Southern Ry. Co. v. Tift, 206 U. S. 428.
Ill. Cent. R. Co. v. I. C. C., 206 U. S. 441.
Mills v. Lehigh Valley R. Co., 238 U. S. 473.
Mitchell Coal & C. Co. v. Pennsylvania Ry. Co., 230 U. S. 247.
Mo. P. R. Co. v. Sawmill Co., 235 Fed. 474.

477 We quoted from the above authorities in our former brief and showed by them there is no doubt of the power of the Commission in such cases not only to fix a rate for the future, but to award damages for wrongs suffered in the past by reason of the rate

condemned. This was clearly stated by Chief Justice White in the Abilene Oil case. This court says: "Again it must be presumed in the absence of any evidence to the contrary that the carriers involved in this litigation honestly and in good faith established the rate condemned by the Commission, as just and reasonable," but this court must have overlooked the case of Ill. Cent. R. Co. v. I. C. C., 206 U. S. 441, cited in our former brief at page 29, where the U. S. Supreme Court said: "No presumption of law that a freight rate upon a particular commodity is reasonably low exists because such rate has been duly published and filed by the carrier with the Interstate Commerce Commission." The statement of this court is therefore in direct conflict with the opinion of the U. S. Supreme Court on that question. But even if such presumption did exist in favor of the carrier, is not that presumption entirely overcome when the Commission after full hearing finds the rate was unreasonable and therefore unlawful? Especially so in this case, because the Commission has twice found the rate unreasonable, namely, first in 1905 and again in 1908, and that finding was upon full inquiry before this court upheld by the decision of Judges Adams, Sanborn and Van Deventer.

In the reply brief of plaintiff in error filed just before this case was argued before this court they quoted from the opinion of Commissioner Prouty in National Wool Growers Ass'n v. R. R., 25 I. C. C., 675, to the effect that it does not "follow that because a rate is found unreasonable upon a given date it has been unreasonable during the two years preceding" and reparation can only be granted where it is found that the charge was unreasonable when paid and then the Commissioner ordered reparation from March 21, 1912, the date when the Commission found the rate unreasonable. But in the case at bar, the Commissioner has found the rates unreasonable from 1903, when first put into effect, down to 1905, when it rendered its first decision, and again down to 1908 when its second decision was rendered and the new rates for two years put into effect. The claims filed covered a period of shipments from 1906 to 1908, and the Commission in its finding in this case expressly found "that this rate was unreasonable and excessive and that a reasonable rate to have been charged on the several shipments at the time they were made would have been that rate named in the column marked 'rate ordered.'"

478 But this court says:

"Further, whether the carriers established an unreasonable and unjust rate is still open in this very action to the consideration of a jury and if all these shippers had obtained separate orders of reparation, there might be as many diverse verdicts upon the question of reasonableness of the rates as there were cases."

Is this the law? Has this court noted the cases cited at page 25 of our brief? We are forced to believe this court has overlooked those cases or it would not have made the foregoing statement in

its opinion. That statement is in direct conflict with the decisions cited, viz:

C. N. O. & T. R. Co., v. I. C. C., 162 U. S. 184.
L. & N. R. Co. v. Behlmer, 175 U. S. 648.
I. C. C. v. L. & N. R. Co., 190 U. S. 275.
Texas & P. R. Co. v. Abilene Oil Co., 204 U. S. 426.
I. C. C. v. C. R. I. & P. R. Co., 218 U. S. 110.
N. Y. C. & H. R. Rd. v. Murphy, 224 Fed. 407.
Penn. R. R. Co. v. Coal Co., 230 U. S. 184.

Notably so with the opinion of Chief Justice White in the Abilene Oil Company case, l. c. 444, where he said:

"It was therefore declared to be the duty of the courts, where the Commission had not considered such a disputed question, to remand the case to the Commission to enable it to perform that duty, a conclusion wholly incompatible with the conclusion that courts, in independent proceedings, were empowered by the act to regulate commerce, equally with the Commission, primarily to determine the reasonableness of the rates in force through an established schedule."

And in I. C. C. v. C. R. I. & P. Ry. Co., 218 U. S. 110, the U. S. Supreme Court, referring to the finding of the Commission upon the character of the rates: "Such decision we have said with tiresome repetition is peculiarly the province of the Commission to make, and that its findings are fortified by presumption of truth, due to the judgment of a tribunal appointed by law and informed by experience." The Abilene Oil case decides as clearly and forcibly as it is possible for the usually vigorous language of Chief Justice White to impart, that the act of Congress gives to the Commission the primary power to pass upon the rates, and that Section 9 of the act does not mean or is not subject to the interpretation of giving to the courts the power of deciding or leaving to a jury to decide the reasonableness or otherwise of any given rate or schedule of rates.

To prevent the evils depicted in that case that might arise
479 from the different verdicts that might be given and the practical annul/ment of the schedule of rates in one case or one jurisdiction and upholding it in another was the very reason given by the Chief Justice why such questions could not be and should not be left to courts and juries and why in that very case the court reversed the lower court and held that the rates must be first passed upon by the Commission.

In Penn. R. R. Co. v. International Coal Co., 230 U. S. 184, it was conceded by counsel for the carriers that the rates were binding upon both shipper and carrier until relieved from the binding force by order of the Commission, and it was contended in that case that the court did not have jurisdiction because no action had been taken by the Commission on the questions involved before bringing suit in court for the damages suffered. In that case Justice Lamar in delivering the opinion of the court said:

"It (the carrier) argued that this was a rate making question and that it was for the Commission as the rate regulating body to determine, not only whether a dissimilarity existed, but whether the rates were properly adjusted to meet that dissimilarity. Under the

statute there are many acts of the carrier which are lawful or unlawful according as they are reasonable or unreasonable, just or unjust. The determination of such issues involves a comparison of rate with service and calls for an exercise of the discretion of the administrative and rate regulating body. For the reasonableness of rates, and the permissible discrimination based upon difference in conditions are not matters of law. So far as the determination depends upon facts, no jurisdiction to pass upon the administrative questions involved has been conferred upon the courts. That power has been vested in a single body so as to secure uniformity and to prevent the varying and sometimes conflicting results that would flow from the different views of the same facts that might be taken by different tribunals. None of these considerations operate to defeat the court's jurisdiction in the present case, because the question was not one of 'administrative discretion.'" L. & N. R. R. Co. v. Cook Brewing Co., 223 U. S. 70.

Where such questions are not involved a shipper may sue for damages in court without first going before the Commission.

So in Mitchell Coal & Coke Co. v. Penn. R. R. Co., 230 U. S. 247, it is clearly pointed out by the U. S. Supreme Court that:

"The courts have not jurisdiction of a suit brought by a shipper against a carrier for damages by reason of paying other shippers of similar goods an unreasonable amount for services in con-
480 nection with such transportation unless and until there has been a finding by the Interstate Commerce Commission that the payments so made to the other shippers were unreasonably large."

And again:

"There is a necessity which is recognized by the Act to regulate commerce, of having questions as to reasonableness of rates and allowances settled by a single tribunal in order to avoid the conflicting decisions which would result if several different tribunals could pass upon the same question; and the Act itself has designated the Interstate Commerce Commission as that tribunal."

And in that case the court remanded the case for dismissal, because the rate complained of had not first been declared unreasonable and therefore unlawful by the Commission, but the dismissal was stayed to give plaintiff an opportunity to make application to the Commission.

The argument of counsel for the railroads and the reasons set forth by this court in its opinion that Sec. 1 of the Act should not apply to damages caused by an unreasonable rate might very well be addressed to Congress, but not to a court, because it practically annuls the Act of Congress. The language of the Act seems too plain for argument. The Commission after a full hearing extending over a long period of time having decided the rate in force was unreasonable and having also upon a full hearing decided what was or would have been a reasonable rate at the time of the shipments, nothing remains for the court or jury to decide except the amount of damages suffered by a shipper, if any.

It is true "the rate condemned is the legal rate, binding upon

both the carrier and the shipper," and "the shipper could not sue in a court of law to recover back any portion of the legal rate," but prior to the Act of Congress the shipper could have done so at common law, if the rate was unreasonable and extortionate. That was so decided in the Abilene oil case. But after the passage of the Act that common law right was taken away and the means provided for recovering damages suffered, if any, by having the Commission make inquiry, even upon its own motion, or upon complaint of anybody interested, as to the reasonableness of the rate and to award damages for the wrong committed by the carriers in charging such unreasonable rate. That was the decision in the Abilene Oil case.

The rate condemned was lawful only when it was reasonable.
481 The carrier took that chance in establishing the rate. If unreasonable, then it was unlawful and the carrier has collected what it was not lawfully entitled to. And if so, then why should it not be required to refund or repair the damages caused by its unreasonable and therefore unlawful act? Is the argument against the plain provisions of the Act sound? Are not the carriers and the court by that line of argument practically annulling the Act of Congress? But says the court:

"The objections are rather to the manner and form of granting reparation under Section 1 than to the power of the Commission to grant reparation at all."

It is difficult to understand just what the court means by that language. The Act of Congress prescribes the "manner and form" which the proceedings shall take to attain reparation and that manner and form has been followed in this case. Of course the claimant must prove that damages were suffered and what they were. This court in referring to the case of Penn. R. R. Co. v. International Coal Mining Co., says:

"If the carrier in the case cited could not be held liable merely for the difference between the established rate and the amount of the rebate in a case of discrimination under Section 2 it certainly can be argued with much more force that a shipper who has paid the legally established rate under Section 1 may not recover the difference between that rate and the rate established by the Commission for the future without proof that his actual damages did in fact amount to that sum."

The vice in the foregoing statement is this, that in the coal company case the legal rate established was not held to be unreasonable, nor unlawful, and therefore it did not follow that the shipper was damaged by paying that lawful rate. It did not follow that the shipper was damaged because the carrier had committed an unlawful act by the giving to another a lower rate, or a rebate. But in this case not only was the rate condemned, but the Commission, after a full hearing, determined what would have been a reasonable rate at the time of the shipment. That rate is not necessarily the same as the rate prescribed for the future. The fact that it is so in the present case is not proof that it is a rule to be followed. The rate prescribed for the future might be different from the rate held to be

reasonable at the time of the shipment. Conditions might be very different, so that a reasonable rate for the future would be higher or lower than in the past. But in this case the Commission
482 has not only condemned the rate charged, but has found what would have been a reasonable rate at the time of shipment. And found it upon evidence after a full hearing. That evidence is not before this court. When we said in our brief that all of the evidence was not before this court, we referred, of course, to the evidence before the Commission on the subject of the rates past, present and future.

As stated by Judge Knappen in the Darnell case, 221 Fed. 890. 894:

"Cases of excessive and unreasonable rates differ from discriminating charges in the fact that in the latter there is nothing unlawful in the charging and receiving of the higher or published rates on which the demand for reparation is based. On the other hand, the charging of an excessive and unreasonable rate is ipso facto unlawful."

Is not what Judge Van Valkenburgh said in his opinion in this case true, viz:

"There is a wide distinction between cases of damages caused by discrimination and those involving unreasonable rates"?

The Penn. R. R. Co. v. Coal Co. case certainly does not hold that as to unreasonable rates the damages are not proven by the proof of what would have been a reasonable rate. Nor until this court handed down its opinion in this case, has any court so far as we have been able to ascertain, so held.

The decisions of the Commission have uniformly been the other way, and likewise the courts.

In The Penn. R. R. Co. v. Coal Co., Justice Lamar said:

"Making an illegal undercharge to one shipper did not license the carrier to make a similar undercharge to other shippers, and if, having paid a rebate of 25 cents a ton to one customer, the carrier in order to escape this suit had made a similar undercharge or rebate to the plaintiff, it would have been criminally liable, even though it may have been done in order to equalize the two companies. For under the statute, it was not liable to the plaintiff for the amount of the rebate paid on contract coal, but only for the damages such illegal payment caused the plaintiff. The measure of damages was the pecuniary loss inflicted on the plaintiff as the result of the rebate paid. Whatever they were they could be recovered."

483 But if plaintiff got the full market price for his coal and the market was not influenced any by the rebate given the favored shipper, then the plaintiff necessarily was not damaged. That reasoning cannot apply to an unreasonable rate, because if the shipper has paid a rate found to be unreasonable, and the Commission finds from the evidence what would have been a reasonable rate at the time of shipment, it follows that the shipper is necessarily damaged by the difference in rates. The Commission must be presumed to have taken into consideration the effect of the rate upon the

market, and if the market had risen in proportion to the difference in the rates, then the rate would not have been unreasonable. The evidence as to rates before the Commission is not in the record, therefore, how can this court determine that the Commission in finding the rate unreasonable and in finding what would have been a reasonable rate, did not take into consideration the condition and effect upon the market of the unreasonable rate?

Justice Pitney, in The Penn. R. R. Co. v. Coal Co. case, says at page 239, on the question of evidence as to damages caused by unlawful discrimination, that "the conclusion of the court" is "entirely unsupported by authority."

See also

Cook v. C. & C. Ry. Co., 81 Iowa, 551, 563.
L. & N. R. Co. v. Wilson, 132 Ind. 517-525.

Where the difference in the rate paid and the rebate was held to be the proof and measure of damages.

The Jacoby case, 242 U. S. 89 and Clark Brothers Mining Co. case, 238 Fed. 642, cases cited by this court, involved only questions of damages arising from discrimination and not from unreasonable rates.

In Osborne v. C. & N. W. Ry. Co., 48 Fed. 49, it was held:

"In an action by a shipper against a railroad company for charging a greater compensation for a shorter than for a longer haul in violation of Sec. 4 of the Interstate Commerce law, the measure of damages is the excess in the rate charged for the shorter haul over that for the longer haul, multiplied by the number of hundred pounds shipped by the plaintiff."

The U. S. Supreme Court in both the Meeker cases, 236 U. S. 412 and 434, and in the Mills case, 238 U. S. 473, has put its approval upon the difference in the rates as the proper measure
484 of damages. In the last Meeker case, 236 U. S. 434, 436, the Commission found:

"That the complainant paid charges thereon amounting to $136,663.41 at the rates herein found to have been unreasonable, and was damaged to the extent of the difference between the amount which he did pay and $125,849.81, the amount which he would have paid at the rates above found reasonable,"

and made an order for reparation for that amount. The court approved that finding.

What evidence was offered before the Commission, if any, other than showing the shipments and the amounts paid and the amounts that would have been paid under the rates found reasonable does not appear. But so far as the measure of damages is concerned the differential is approved.

Now then what other evidence could be introduced? Must a shipper follow up the proof by showing the conditions of the market and whether he lost or gained on that market and what the profits or losses were? Surely that is not necessary. If it is, then the

court makes it impossible to make the necessary proof and we would have a case of "injuria sine damno."

It has been held by the Commission that it will not inquire into the ultimate profits or losses a shipper might have.

In Kindelon v. S. P. R. Co., 17 I. C. C. 251, 255, the Commission held:

"The defendants further contend that the complainants herein have not shown that they were damaged. It is well settled that reparation in any given case is due the person who has been required to pay an unlawful charge as the price of transportation. The shipper who has been charged an unlawful rate and who is the owner of goods transported is entitled to repayment without the imposition of the impossible task upon the Commission of ascertaining the ultimate profits accruing from the business of the shipper. Moreover, the owner of the freight who had been required to pay an unreasonable rate is entitled, upon proper complaint and showing, to reparation, irrespective of the profits accruing from his business. Where a commission merchant who pays the freight in the first instance has settled with his principal, who by the terms of that settlement has paid the freight charges, such commission merchant is not a proper party to maintain a proceeding for reparation."

To the same effect:

Critchfield & Woolfolk v. S. P. Co., 24 I. C. C. 679, 680.

485 The books are full of cases for damages suffered by a shipper because of delays in shipment, the measure being the difference in the market price on the day the stock should have arrived and been on the market and the day it did arrive and was marketed. If the delay was due to the fault of the carrier, and the shipper was damaged, he has always been allowed to receive the difference in the market value.

Says this court:

"So far as the record shows the owners of the cattle might have sold them on the ranges, might have sold them f. o. b. points of origin, or might have sold them at delivered prices to which the freight charge was added."

But the record does not show any of those possibilities. The record shows, as we contend and hope we have shown satisfactorily to the court, that the owners shipped the cattle to the market for sale. If they were sold on the ranges by the original owner, then they were not shipped in his name, but in the name of the man who bought them and who was then the owner, because the record shows only the name of the owner. The Commission found upon the evidence before it, that the owner shipped the cattle, therefore such owner could not have sold them on the range. If the owner shipped the cattle to a commission company for sale on the market, as we contend the record shows, then he couldn't and didn't sell them "f. o. b. points of origin," and if he shipped them to a commission house for sale on the market he didn't sell them at delivered prices to which the freight was added. Shipping to a commission com-

pany for sale on the open market means exactly that and nothing else. A sale by the commission house on such market, payment of the freight out of the proceeds, and remittance to the owner in whose name the commission house keeps its accounts, necessarily negatives all the possible suppositions instanced by the court.

In the Darnell case, 221 Fed. 890, 892, the contention was made that the unreasonable freight paid was absorbed and the seller and shipper not damaged. The Commission in that case found that shippers in Memphis have charged substantially the same price, whether "sales were in the East, or for export, or for shipment to California," and that thus the advance in the freight rate has been added to the price paid by the consumer. Defendants insist that this situation conclusively negatives the existence of pecuniary loss by the shippers. The Commission, however, speaking
486 through Commissioner Prouty, declined to accept defendants' interpretation of damages, saying:

"These complainants were shippers of hardwood lumber to this destination and they were entitled to a reasonable rate from the defendants for the service of transportation. An unreasonable rate was in fact exacted. They were thereby deprived of a legal right, and the measure of their damage is the difference between the rate to which they were entitled and the rate which they were compelled to pay."

The holding of the Commission was approved in that case, and the lower court was reversed and the case remanded. There we have a case where "the advance in the freight rate has been added to the price paid by the consumer." The Commission so found and yet the shipper was held to be damaged to the extent of the difference in the rates.

In the case of N. Y., N. H. & H. R. Co. v. Ballou, decided June 6, 1917, by the Circuit Court of Appeals, Ninth Circuit, this precise question was decided and the court reviewed the authorities upon the subject. It was there held:

"The proper measure of damages suffered by one on account of the exaction of unreasonable freight charges is the difference between reasonable charges and unreasonable charges."

In that case, the defendant averred in the answer that the petitioner sold the goods shipped and traded at a retail price of fifteen dollars in excess of the factory list price; that said sum was added to cover and did cover the difference in freight charges sought to be recovered as damages by the petitioner. To that plea, the petitioner demurred, the lower court sustained the demurrer and refused to permit testimony in support of that defense. The upper court said:

"Can the petitioner be deprived of the reparation provided by law, because in the petitioner's business the freight paid was entered as an element of cost and was passed along to the ultimate purchaser in the selling price?"

The court then quotes from Burgess v. Transcontinental Freight Bureau, 13 I. C. C. 680, and from Nicola et al. v. L. & N. R. R. Co., 14 I. C. C. 199-207, and Kindelon v. Southern Pac. Co., 17 I. C. C.

251, 254, Ballou v. R. R. Co., 34 I. C. C. 120, 121, and the Meeker cases, and then said:

487 "The Interstate Commerce Commission in that case had found that, by reason of being charged an excessive and unreasonable rate, the shipper had been damaged to the extent of the difference between what it actually paid and what it would have paid, had it been given the rate which the Commission found would have been reasonable. Against this report, the carrier contended that the shipper had failed to prove by competent evidence that it had sustained damage, and that the measure of damages, if any, should have been the loss to the shipper as the result of the discrimination or unreasonable rate. But the Supreme Court could find nothing in the report of the Commission in that case pointing to the application of an erroneous or inadmissible measure of damages in favor of the shipper, and neither can we find in this case anything pointing to an erroneous or inadmissible measure of damages in favor of the shipper."

This court says: "Why is the difference in the rate condemned and the rate established for the future the measure of the injury which the cattle owner received?"

The court there confuses the rate established for the future with the rate which the Commission found would have been a reasonable rate at the time of shipment. In the present case it so happened to be the same as found by the Commission, but as we have heretofore stated it might not be. The question therefore should be why is the difference between the rate condemned and the rate found to have been reasonable at the time of shipment the measure of the injury? The Commission said because the owner of the cattle received that much less for his cattle. And isn't that true? If upon the day the shipment was made the rate was 3 cents per hundred pounds more than the Commission found it should have been and the owner paid that additional 3 cents, wasn't he out of pocket exactly that sum? The Mills and Meeker cases decide that is the proper measure of damages. This court says:

"When we enter the domain of facts which everybody knows, * * * may we not know that freight rates may destroy commerce, may stop the shipment of cattle, that low freight rates increase the volume of transportation and that freight rates must be such as will allow traffic to move; otherwise the carrier becomes bankrupt as well as the shipper."

Conceding what the court says is true as a possibility, why stop there? Why not go further into the domain of facts which everybody knows" and may we not know as a fact that the markets for cattle at Kansas City, St. Louis and Chicago have been established for many years that those markets control the prices and

488 value of cattle over a large part of the whole country; that cattle are shipped to those markets from a vast territory, extending for hundreds of miles from them; that the freight rate on the shipments differs in accordance with the distance from which the cattle are shipped; that when the cattle are on those markets they are classed and sold according to their quality and weight, and

that one carload of steers from Kansas and one from Texas paying a much larger freight rate, if of the same weight and quality, will bring the same price upon the market, upon the same day, regardless of the difference in freight. When a shipment of cattle from Texas or New Mexico or any other place is made to those markets the owner knows they will be sold on those markets in competition with the same kind and quality of cattle from points nearer the market and paying a less freight. May we not also know that the price of cattle at those markets and for that matter all over the country depends upon the law of supply and demand? That when the supply is large and the demand slight the price is low, and when the supply is limited and the demand great the price is high? May we not know that the present high price of cattle is due not to high or low freight rates, but to the limited amount of the world's meat supply and the great demand caused in part by the war? If these well known facts of which the court has the right to take judicial notice be conceded does it not follow, as a fact, that needs no further proof, that if an owner of cattle which are sold on the market, has been caused to pay a freight rate on those cattle to the extent of 3 cents per hundred pounds greater than the Commission after full hearing and upon evidence found he should have paid, that he was therefore necessarily damaged that much? Why require a shipper to prove a lot of negatives? Why must he show the non-existence of a lot of things we all know do not exist? Especially after an investigating body "empowered by law and fitted by experience," after full inquiry, and upon due notice, has found the fact to be that the freight rates to the markets in question were unreasonable and has found what would have been a reasonable rate at that time. Would not the Commission in making such findings necessarily consider and determine all the possible suppositions suggested by the court? When the carrier charged 3 cents per hundred pounds more than the Commission found it should have charged and the shipper paid that additional 3 cents per hundred is not the shipper damaged that 3 cents? Hasn't he paid exactly 3 cents more than he would have paid if the charge had been 3 cents less? Suppose he had not shipped his cattle to market at all, but from one point to
489 another, and had been charged by the carrier an excessive rate of 3 cents per hundred, wouldn't the shipper have paid that much more than he should have paid and therefore out of pocket by that amount? Suppose instead of cattle the shipment had been other commodities, not for sale, or passage fare. The railroad fare from Kansas City to St. Louis is $5.50; suppose the Commission upon full inquiry decided that amount is unreasonable and that the reasonable fare at the time it was paid should have been $4.00, is not the passenger who pays that excess of $1.50 damaged to the extent of $1.50? Hasn't he that much less money?

This court apparently did not note the Mills case, 238 U. S. 473, which was the same case reported under the title of Lehigh Valley R. R. v. Clark, 207 Fed. 717, decided by the U. S. Circuit Court of Appeals for the Third Circuit. The Circuit Court of Appeals reversed the lower court upon the ground:

"First, that there were no sufficient findings of fact in the reports of the Commission, as required by the statute;

And second, that the plaintiffs had failed to present any evidence which made out a prima facie case of damage sustained."

The court held the findings sufficient and approved the measure of damages as the difference in the rates. It does not appear from the Supreme Court's report whether there was any other evidence before the Commission in that case, except the report of the Commission, which stated, "additional evidence was taken and the parties were heard in oral argument."

At page 10 of the reply brief counsel say:

"Thus the price of structural steel at San Francisco is made with regard to the cost of getting it there from Pittsburgh. So if the rates on cattle were advanced by 3 cents the prices at the various markets would be raised accordingly and the shipper would receive as much as he did before."

Would he? It might be so as to steel in San Francisco, because as we are advised there is no steel manufactured there and the only way to get it there is to ship it from Pittsburgh. But is that true of cattle. Cattle from the Missouri territory could not be shipped to San Francisco, because there are in California and adjoining states a sufficient supply of cattle for the San Francisco market, which can be shipped to San Francisco at a much less rate of freight than cattle from Missouri points or any of the territory supplying the
490 markets at Kansas City, St. Louis and Chicago. If, therefore, a shipment of cattle was made to San Francisco from this territory at any higher freight rate than that accorded to shipments from California and the territory supplying the San Francisco market, would the cattle from this territory bring a higher price over the cattle from that territory sufficient to absorb the difference in freight? No, of course not. For that reason cattle from California are not shipped to the middle or eastern markets, nor from the last named markets to San Francisco. So we get back again to the law of supply and demand and the fallacy of counsel's argument is apparent. Counsel in their reply brief further argued that to give reparation under Section I would in effect be to give a latent rebate "to the disfavor and prejudice of shippers whose business was done and whose transactions were long since closed on the basis of the rates then paid by them, and so forth." But counsel forget or ignore that when the rate is condemned as unreasonable, no matter at whose instance, all shippers who have paid that unlawful rate may within the time allowed by law file their claims with the Commission and upon proof obtain reparation for the damage suffered. Therefore it would not be in effect giving a latent rebate. Failure of other shippers to assert their rights is no reason for denying their rights to those who do assert and claim them.

Having in mind the numerous cases in which the Commission and also the courts have heretofore held the difference in rates the measure and proof of damages without more, and the great difficulty of proving damages in any other way, and that the opinion of this

court in this case is the first holding on record that the difference in rates is not the proper measure of damages caused by an unreasonable rate, we earnestly and respectfully urge the court to grant a rehearing.

In conclusion we call the court's attention to Sec. 16*a* which gives to the Commission the power to grant rehearings and to set aside its orders.

It has been held by Pritchard and Woods, Circuit Judges, and McDonell, District Judge, in L. & N. R. Co. v. U. S., 218 Fed. 89, that "if the complainant is dissatisfied as to the decision of the Interstate Commerce Commission, that it is its duty under the statute (Sec. 16*a*) to apply to the Commission for a rehearing, in order that it may offer any additional evidence bearing on the question
491 of the unreasonableness of the rates, and as to whether the rate is confiscatory."

Sec. 16*a* applies to an order made by the Commission "in any proceeding" before it, and if it be the duty of the carrier to apply to it for rehearing as to an unreasonable rate, why is it not also the duty of the carrier to also apply for a rehearing upon a reparation order. It has been done.

St. L. & S. W. Ry. Co. v. Samuels & Co., 211 Fed. 588-593.

It was not done in this case. The Commission should be given an opportunity to correct its errors, if any, by such motion for rehearing, before its orders are set aside by any court.

We beg further to call the court's attention to the question discussed in our former brief at page 93 and not passed upon by the court, that an order of the Commission is not subject to collateral attack and cannot be lawfully set aside and held void for want of sufficient evidence, except in a direct proceeding for that purpose to which the Commission is a party with the right and opportunity to defend its order. In the case of I. C. C. v. L. & N. R. Co., 227 U. S. 88, 93, where it was held the Commission's order should be based upon evidence, the Commission was a party.

In Eastern Texas R. Co. v. Railroad Com. of Texas, 242 Fed. 300, 305, decided April 20, 1917, in speaking of an order of the Commission it was held: "The validity thereof can only be attacked directly. * * * It certainly cannot be attacked collaterally in any case."

The plaintiffs in error had the right to ask the Commission for a rehearing, which they did not do. They had the right to introduce evidence to disprove the findings of the Commission, which they did not do. We submit, therefore, the order made out a prima facie case and should not be in a collateral proceeding like this, set aside.

For the reasons given we respectfully ask the court to grant a rehearing.

Respectfully submitted,

S. H. COWAN,
I. H. BURNEY,
B. F. DEATHERAGE,
GOODWIN CREASON,
For Defendant in Error and Petitioner.

492 I hereby certify that in my opinion the foregoing Petition for Rehearing is well founded in point of law, is made in good faith and not for delay.

B. F. DEATHERAGE,
Of Counsel for Defendant in Error.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Dec. 24, 1917.

---

493 (Opinion on Rehearing.)

United States Circuit Court of Appeals Eighth Circuit.

December Term, A. D. 1917.

Also Nos. 4820, 4821, 4822, 4823, 4824, 4825, 4826, and 4827.

The Atchison, Topeka & Santa Fe Railway Company, et al.,
Plaintiffs in Error,
No. 4819. vs.
E. B. Spiller, Defendant in Error.

On Motion for Rehearing.

Before Sanborn and Carland, Circuit Judges, and Booth, District Judge.

Carland, Circuit Judge:

Since the opinion of this court in the above case was filed, the Supreme Court has decided in Southern Pacific Company, et al., vs. Darnell-Taenzer Lumber Company, et al., (January 21, 1918), that where a shipper has paid a rate afterwards declared to be excessive by the Interstate Commerce Commission, he may recover as damages the difference between the excessive rate and the rate declared to be just and reasonable by the Commission without proof of actual injury. It results that anything said in the opinion of this court contrary to the above decision is overruled. Our judgment, however, was not based alone upon our opinion as to what was the lawful measure of damages, but on other grounds mentioned in the opinion to which we still adhere. The motion for a rehearing is, therefore, denied.

Filed March 11, 1918.

---

494 (Order denying Petition for Rehearing in Causes Nos. 4819 to 4827, incl.)

December Term, 1917.

Monday, March 11, 1918.

These causes came on this day to be heard upon the petition for a rehearing, filed by counsel for defendant in error.

It appearing that since the filing of the opinion of this Court in these causes the Supreme Court of the United States has decided in the case of Southern Pacific Company, et al., vs. Darnell-Taenzer Lumber Company, et al. (January 21, 1918), that where a shipper has paid a rate afterwards declared to be excessive by the Interstate Commerce Commission, he may recover as damages the difference between the excessive rate and the rate declared to be just and reasonable by the Commission without proof of actual injury, and

It is, therefore, now here ordered by this Court that anything said in the opinion of this Court in these causes contrary to the said decision of the Supreme Court is hereby overruled.

It is further ordered that the petition for rehearing of these causes be, and the same is hereby, denied.

March 11, 1918.

---

495 (Petition for Writs of Error from Supreme Court, U. S., and Assignment of Errors, in Causes Nos. 4819 to 4827, incl.)

Comes now E. B. Spiller, the defendent in error in the above entitled cases, and alleges that on the 11th day of March, 1918, this Court entered judgment herein reversing the judgment of the United States District Court for the Western Division of the Western District of Missouri, in said cases, and remanding the same to said court for a new trial, in which judgment and proceedings of this court certain errors were committed to the prejudice of this defendant in error, all of which will in detail appear in the assignment of errors which was filed with this petition.

Wherefore, the plaintiff, E. B. Spiller prays that a writ of error issue for the correction of the errors so complained of; that a transcript of the record, proceedings and pleadings in this case and all of the poceedings in this court, together with the opinion of this court and the modified opinion thereof, duly authenticated, be sent to the United States

Supreme Court, in order that said judgment so rendered by this court be reversed, and that judgment may be rendered in favor of this defendant in error and against said plaintiff in error.

B. F. DEATHERAGE,
S. H. COWAN,
Attorneys for Defendant in Error.

I. H. Burney,
Goodwin Creason,
Of Counsel.

Comes now E. B. Spiller, defendant in error in the above entitled cause, by his attorneys, and in connection with his petition for writ of error says, that in the record and proceedings of this cause and during the hearing and
496 determination thereof in the United States Circuit Court of Appeals for the Eighth Circuit error intervened to his prejudice and he therefore makes the following assignment of errors upon which he will rely in the prosecution of the writ of error from the Supreme Court of the United States to this Court.

I.

The Court erred in holding that there was no proof before the Commission of who owned the live stock shipped and who paid the excessive freight and consequently who was damaged thereby and therefore that the order of reparation made by the Interstate Commerce Commission in favor of this defendant in error was unsupported by the evidence and was void.

II.

The Court erred in holding that there was not sufficient eivedence to support the findings of the Commission that the claims upon which the order of reparation was based had been properly, legally and duly assigned to your petitioner.

III.

This Court erred in holding that conceding there was sufficient evidence to show and prove the assignment of the claims upon which the order of the Interstate Commerce Commission for reparation was based, yet that the evidence showed that the purpose of the assignment was not such as to vest the legal title to the claims in defendant in error so as to authorize the Interstate Commerce Commission to

make the award of damages to him, and that therefore the order of reparation was void.

IV.

The Court erred in holding that in the proceedings before the Interstate Commerce Commission counsel were
497 not required to present objections to the inadmissible testimony with the same nicety as in actions in court, and that inadmissible or objectionable testimony, although not objected to when offered before the Commission and although received by said Commission in evidence should not be considered by the Court in support of the Commission's order.

V.

That in an action on a reparation order of the Interstate Commerce Commission made in favor of shippers, based on the exaction of unreasonable rates which had been held by the Commission to be unreasonable, the question whether the rate exacted was unjust and unreasonable or not is open to determination by the court or jury, contrary to the decision of this Court in Texas & Pacific R. R. Co. v. Abilene Oil Co., 204 U. S. 426; Interstate Commerce Commission vs. C. R. I. & P. Ry. Co., 218 U. S., 40 and other cases.

VI.

The Court erred in holding that where a rate subsequently condemned by the Interstate Commerce Commission as unreasonable was when exacted a legal rate, that the shipper could not sue in a court of law and recover back any portion of such rate.

VII.

The Court erred in holding that in fixing the rate for a period of two years in the future and allowing reparation for the exaction of the unreasonable rate during a period of two years prior to the time of the order fixing the rate for the future, the Interstate Commerce Commission in effect estalished the rate for a longer period than authorized by law, therefore the order of reparation was improper and that the shipper could not recover the difference between the rate paid and the rate found to be reasonable at the time
498 of such payment.

VIII.

That this Court erred in holding that the Court has the power to set aside an order of reparation made by the Interstate Commerce Commission in a collateral proceeding to

which the Interstate Commerce Commission is not a party based upon such order to recover reparation.

IX.

That this Court erred in holding that where the carriers did not, under Sec 16-a of the Act to Regulate Commerce, apply to the Interstate Commerce Commission for a rehearing, they were not thereby precluded in a collateral proceeding based upon the findings and order of the Commission for reparation from claiming such findings and order of the Commission were invalid because not suppported by sufficient evidence.

X.

This Court erred in holding that sufficiency of the proof and validity of the assignments to petitioners could be passed upon by the appellate court, although no such objections were presented to the Commission and no objections made upon that ground.

XI.

This Court erred in holding that conceding there was sufficient evidence to prove the assignment of the claims to the defendant in error, that the purpose of the assignments was not such as to vest the legal title in defendant in error so as to authorize the Commission to make the award of damages to him, although such claim was not presented to the Interstate Commerce Commission when said order was made and no objection of any kind was made at the hearing before the Commission based upon that ground.

499 XII.

The decision of this Court is in conflict with the decisions of the United States Supreme Court in:

L. & N. R. R. Co., vs. Finn, 235 U. S. 605.

Texas & Pacific R. R. Co., vs. Abilene Oil Co., 204 U. S. 426.

I. C. C. vs. C. R. I. & P. R. R. Co., 218 U. S. 110.

Mitchell Coal & Coke Co. vs. Pa. R. R. Co, 230 U. S. v. 247.

I. C. C. vs. L. & N. R. R. Co., 227 U. S. 88.

U. S. vs. L. & N. R. R. Co., 235 U. S. 314.

Eastern Texas R. R. Co. vs. R. R. Commission of Texas, 242 Fed. 300, 305.

Same case recently decided by the Supreme Court of the United States May 19, 1918.

XIII.

This Court erred in reversing the case and remanding the same for new trial. The judgment of the lower court should have been affirmed.

B. F. DEATHERAGE,
S. H. COWAN,
Attorneys for Defendant in Error.

I. H. Burney,
Godwin Creason,
Of Counsel.

On reading the foregoing petition and assignment of errors the writ of error prayed for is hereby allowed.

St. Paul, May 27, 1918.

WALTER H. SANBORN,
Senior U. S. Circuit Judge.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Jun. 1, 1918.

---

500 (Order allowing Writs of Error from Supreme Court, U. S., and fixing amount of Bond in Causes Nos. 4819 to 4827, incl.)

May Term, 1918.

Saturday, June 1, 1918.

Upon reading the petition for writ of error and assignment of errors filed herein by E. B. Spiller, Defendant in Error, it is hereby ordered that a writ of error be and it is allowed from the United States Supreme Court.

It is further ordered that within ten days from this date the defendant in error shall file herein a good and sufficient bond in the sum of One Thousand Dollars, to be approved by the Court, conditioned that the said plaintiff shall prosecute said writ with effect and answer for all costs for which he may be adjudged liable under the law if he fails to make good his plea.

It is further ordered that all proceedings herein in this Court and in the United States District Court for the Western Division of the Western District of Missouri be stayed

and suspended until the determination of said writ of error by said United States Supreme Court.

WALTER H. SANBORN,
Senior United States Circuit Judge for the Eighth Circuit.

---

501 United States of America—ss.

The President of the United States of America, To the Honorable The Judges of the United States Circuit Court of Appeals for the Eighth Circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the United States Circuit Court of Appeals for the Eighth Circuit, before you, or some of you, between E. B. Spiller, Plaintiff in Error, and The Atchison, Topeka and Santa Fe Railway Co., Defendant in Error, a manifest error hath happened, to the great damage of the said E. B. Spiller, Plaintiff in Error, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in said Supreme Court of the United States at Washington, D. C., within thirty days from the date herein, to the end that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, The Honorable Edward D. White, Chief Justice of the United States, this first day of June in the year of our Lord One Thousand Nine Hundred and Eighteen.

Issued at Office in St. Paul, Minnesota, in the Eighth Circuit, this first day of June in the year of our Lord One Thousand Nine Hundred and Eighteen.

(Seal)

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Allowed by Walter H. Sanborn,
Senior United States Circuit
Judge for the Eighth Circuit.

Return to Writ.

United States of America,
Eastern Division of the
Eastern Judicial District of Missouri—ss.

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the record and proceedings in the within entitled case, with all things, concerning the same.

In Witness Whereof, I hereto subscribe my name, and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit at office in the City of St. Louis this 7th day of June, A. D. 1918.

(Seal)

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

No. 4819. E. B. Spiller, Plaintiff in Error, vs. The Atchison, Topeka and Santa Fe Railway Company.

Writ of Error.

Filed Jun. 1, 1918. E. E. Koch Clerk.

502 United States of America—ss.

The President of the United States of America, To the Honorable The Judges of the United States Circuit Court of Appeals for the Eighth Circuit,—Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the United States Circuit Court of Appeals for the Eighth Circuit, before you, or some of you, between E. B. Spiller, Plaintiff in Er-

ror, and Chicago & Eastern Illinois Railroad Company, Defendant in Error, a manifest error hath happened, to the great damage of the said E. B. Spiller, Plaintiff in Error, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ so that you have the same in said Supreme Court of the United States at Washington, D. C., within thirty days from the date herein, to the end that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, The Honorable Edward D. White, Chief Justice of the United States, this first day of June in the year of our Lord One Thousand [—] Hundred and Eighteen.

Issued at Office in St. Paul, Minnesota, in the Eighth Circuit, this first day of June in the year of our Lord One Thousand Nine Hundred and Eighteen.

(Seal)

E. E. KOCH,
Clerk U. S. Circuit Court of Appeals for the Eighth Circuit.

Allowed by Walter H. Sanborn,
Senior United States Circuit
Judge for the Eighth Circuit.

Return to Writ.

United States of America,
Eastern Division of the
Eastern Judicial District of Missouri—ss.

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the record and proceedings in the within entitled case, with all things, concerning the same.

In Witness Whereof, I hereto subscribe my name, and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit at office in the City of St. Louis this 7th day of June, A. D. 1918.

(Seal)

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

No. 4820. E. B. Spiller, Plaintiff in Error, vs. Chicago and Eastern Illinois Railroad Company.

Writ of Error.

Filed Jun. 1, 1918. E. E. Koch Clerk.

503 United States of America—ss.

The President of the United States of America, To the Honorable The Judges of the United States Circuit Court of Appeals for the Eighth Circuit,—Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the United States Circuit Court of Appeals for the Eighth Circuit, before you, or some of you, between E. B. Spiller, Plaintiff in Error, and Chicago & Alton Railroad Company, Defendant in Error, a manifest error hath happened, to the great damage of the said E. B. Spiller, Plaintiff in Error, as by his complaint appears.

We being willing, that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court of the United States at Washington, D. C., within thirty days from the date herein, to the end that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, The Honorable Edward D. White, Chief Justice of the United States, this first day of June in the year of our Lord One Thousand Nine Hundred and Eighteen.

Issued at Office in St. Paul, Minnesota, in the Eighth Circuit, the United States, this first day of June in the year of our Lord One Thousand Nine Hundred and Eighteen.

(Seal) E. E. KOCH,
Clerk U. S. Circuit Court of Appeals for the Eighth Circuit.

Allowed by Walter H. Sanborn,
Senior United States Circuit
Judge for the Eighth Circuit.

Return to Writ.

United States of America,
Eastern Division of the
Eastern Judicial District of Missouri—ss.

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the record and proceedings in the within entitled case, with all things, concerning the same.

In Witness Whereof, I hereunto subscribe my name, and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit at office in the City of St. Louis this 7th day of June, A. D. 1918.

(Seal) E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

No. 4821. E. B. Spiller, Plaintiff in Error, vs. Chicago and Alton Railroad Company.

Writ of Error.

Filed Jun. 1, 1918. E. E. Koch Clerk.

504 United States of America—ss.

The President of the United States of America, To the Honorable The Judges of the United States Circuit Court of Appeals for the Eighth Circuit,—Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the United States Circuit Court of Appeals for the Eighth Circuit, before you, or some of you, between E. B. Spiller, Plaintiff in Error, and Missouri Pacific Railway Company, Defendant in Error, a manifest error hath happened, to the great damage

of the said E. B. Spiller, Plaintiff in Error, as by his complaint appears.

We being willing, that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court of the United States at Washington, D. C., within thirty days from the date herein, to the end that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, The Honorable Edward D. White, Chief Justice of the United States, this first day of June in the year of our Lord One Thousand Nine Hundred and Eighteen.

Issued at Office in St. Paul, Minnesota, in the Eighth Circuit, this first day of June, in the year of our Lord One Thousand Nine Hundred and Eighteen.

(Seal)

E. E. KOCH,
Clerk U. S. Circuit Court of Appeals for the Eighth Circuit.

Allowed by Walter H. Sanborn,
Senior United States Circuit
Judge for the Eighth Circuit.

Return to Writ.

United States of America,
Eastern Division of the
Eastern Judicial District of Missouri—ss.

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the record and proceedings in the within entitled case, with all things, concerning the same.

In Witness Whereof, I hereunto subscribe my name, and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit at office in the City of St. Louis this 7th day of June, A. D. 1918.

(Seal)

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

No. 4822. E. B. Spiller, Plaintiff in Error, vs. The Missouri Pacific Railway Company.

Writ of Error.

Filed Jun. 1, 1918. E. E. Koch Clerk.

505 United States of America—ss.

The President of the United States of America, To the Honorable The Judges of the United States Circuit Court of Appeals for the Eighth Circuit—Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the United States Circuit Court of Appeals for the Eighth Circuit, before you, or some of you, between E. B. Spiller, Plaintiff in Error, and St. Louis, Iron Mountain and Southern Railway Company, Defendant in Error, a manifest error hath happened, to the great damage of the said E. B. Spiller, Plaintiff in Error, as by his complaint appears.

We being willing, that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court of the United States at Washington, D. C., within thirty days from the date herein, to the end that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, The Honorable Edward D. White, Chief Justice of the United States, this first day of June in the year of our Lord One Thousand Nine Hundred and Eighteen.

Issued at Office in St. Paul, Minesota, in the Eighth Circuit, this first day of June, in the year of our Lord One Thousand Nine Hundred and Eighteen.

(Seal) E. E. KOCH,
Clerk of the U. S. Circuit Court of Appeals for the Eighth Circuit.

Allowed by Walter H. Sanborn,
Senior United States Circuit
Judge for the Eighth Circuit.

Return to Writ.

United States of America,
Eastern Division of the
Eastern Judicial District of Missouri—ss.

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the record and proceedings in the within entitled case, with all things, concerning the same.

In Witness Whereof, I hereto subscribe my name, and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit at office in the City of St. Louis this 7th day of June, A. D. 1918.

(Seal) E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

No. 4823. E. B. Spiller, Plaintiff in Error, vs. St. Louis, Iron Mountain and Southern Railway Company.

Writ of Error.

Filed Jun. 1, 1918. E. E. Koch Clerk.

506 United States of America—ss.

The President of the United States of America, To the Honorable The Judges of the United States Circuit Court of Appeals for the Eighth Circuit,—Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the United States Circuit Court of Appeals for the Eighth Circuit, before you, or some of you, between E. B. Spiller, Plaintiff in Error, and St. Louis and San Francisco Railroad Company, Defendant in Error, a manifest error hath happened, to the

great damage of the said E. B. Spiller, Plaintiff in Error, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ so that you have the same in said Supreme Court of the United States at Washington, D. C., within thirty days from the date herein, to the end that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, The Honorable Edward D. White, Chief Justice of the United States, this first day of June in the year of our Lord One Thousand Nine Hundred and Eighteen.

Issued at Office in St. Paul, Minnesota, in the Eighth Circuit this first day of June, in the year of our Lord One Thousand Nine Hundred and Eighteen.

(Seal)

E. E. KOCH,
Clerk of the U. S. Circuit Court of Appeals for the Eighth Circuit.

Allowed by Walter H. Sanborn,
Senior United States Circuit
Judge for the Eighth Circuit.

Return to Writ.

United States of America,
Eastern Division of the
Eastern Judicial District of Missouri—ss.

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the record and proceedings in the within entitled case, with all things, concerning the same.

In Witness Whereof, I hereto subscribe my name, and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit at office in the City of St. Louis this 7th day of June, A. D. 1918.

(Seal)

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

No. 4824. E. B. Spiller, Plaintiff in Error, vs. St. Louis and San Francisco Railroad Co.

Writ of Error.

Filed Jun. 1, 1918. E. E. Koch Clerk.

507 United States of America—ss.

The President of the United States of America, To the Honorable The Judges of the United States Circuit Court of Appeals for the Eighth Circuit,—Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the United States Circuit Court of Appeals for the Eighth Circuit, before you, or some of you, between E. B. Spiller, Plaintiff in Error, and Chicago, Rock Island and Pacific Railway Company, Defendant in Error, a manifest error hath happened, to the great damage of the said E. B. Spiller, Plaintiff in Error, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ so that you have the same in said Supreme Court of the United States at Washington, D. C., within thirty days from the date herein, to the end that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, The Honorable Edward D. White, Chief Justice of the United States, this first day of June in the year of our Lord One Thousand Nine Hundred and Eighteen.

Issued at Office in St. Paul, Minnesota, in the Eighth Circuit, this first day of June, in the year of our Lord One Thousand Nine Hundred and Eighteen.

(Seal)

E. E. KOCH,
Clerk U. S. Circuit Court of Appeals for the Eighth Circuit.

Allowed by Walter H. Sanborn,
Senior United States Circuit
Judge for the Eighth Circuit.

Return to Writ.

United States of America,
Eastern Division of the
Eastern Judicial District of Missouri—ss.

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the record and proceedings in the within entitled case, with all things, concerning the same.

In Witness Whereof, I hereto subscribe my name, and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit at office in the City of St. Louis this 7th day of June, A. D. 1918.

(Seal)

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

No. 4825. E. B. Spiller, Plaintiff in Error, vs. Chicago, Rock Island and Pacific Railway Company.

Writ of Error.

Filed Jun. 1, 1918. E. E. Koch Clerk.

508 United States of America,—ss.

The President of the United States of America, To the Honorable The Judges of the United States Circuit Court of Appeals for the Eighth Circuit,—Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the United States Circuit Court of Appeals for the Eighth Circuit, before you, or some of you, between E. B. Spiller, Plaintiff in Error, and Illinois Central Railroad Company, Defendant in Error, a manifest error hath happened, to the great damage of the said E. B. Spiller, Plaintiff in Error, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ so that you have the same in said Supreme Court of the United States at Washington, D.

C., within thirty days from the date herein, to the end that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, The Honorable Edward D. White, Chief Justice of the United States, this first day of June, in the year of our Lord One Thousand Nine Hundred and Eighteen.

Issued at Office in St. Paul, Minnesota, in the Eighth Circuit, this first day of June in the year of our Lord One Thousand Nine Hundred and Eighteen.

(Seal)

E. E. KOCH,
Clerk U. S. Circuit Court of Appeals for the Eighth Circuit.

Allowed by
Walter H. Sanborn,
Senior United States Circuit Judge
for the Eighth Circuit.

Return to Writ.

United States of America,
Eastern Division of the Eastern
Judicial District of Missouri—ss.

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the record and proceedings in the within entitled case, with all things, concerning the same.

In Witness Whereof, I hereto subscribe my name, and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit at office in the City of St. Louis this 7th day of June, A. D. 1918.

(Seal)

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

No. 4826. E. B. Spiller, Plaintiff in Error, vs. Illinois Central Railroad Co.

Writ of Error.

Filed Jun. 1, 1918. E. E. Koch Clerk.

509 United States of America,—ss.

The President of the United States of America, To the Honorable The Judges of the United States Circuit Court of Appeals for the Eighth Circuit,—Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the United States Circuit Court of Appeals for the Eighth Circuit, before you, or some of you, between E. B. Spiller, Plaintiff in Error, and Missouri, Kansas and Texas Railway Company, Defendant in Error, a manifest error hath happened, to the great damage of the said E. B. Spiller, Plaintiff in Error, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ so that you have the same in said Supreme Court of the United States at Washington, D. C., within thirty days from the date herein, to the end that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, The Honorable Edward D. White, Chief Justice of the United States, this first day of June, in the year of our Lord One Thousand Nine Hundred and Eighteen.

Issued at Office in St. Paul, Minnesota, in the Eighth Circuit, this first day of June in the year of our Lord One Thousand Nine Hundred and Eighteen.

(Seal) E. E. KOCH,
Clerk U. S. Circuit Court of Appeals for the Eighth Circuit.

Allowed by
Walter H. Sanborn,
Senior United States Circuit Judge
for the Eighth Circuit.

Return to Writ.

United States of America,
Eastern Division of the Eastern
Judicial District of Missouri—ss.

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the record and proceedings in the within entitled case, with all things, concerning the same.

In Witness Whereof, I hereto subscribe my name, and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit at office in the City of St. Louis this 7th day of June, A. D. 1918.

(Seal)

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

No. 4827. E. B. Spiller, Plaintiff in Error, vs. Missouri, Kansas and Texas Railway Co.

Writ of Error.

Filed Jun. 1, 1918. E. E. Koch Clerk.

510 United States of America, To The Atchison, Topeka and Santa Fe Railway Co.,—Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, wherein E. B. Spiller was Defendant in Error, and is Plaintiff in Error here, and you were Plaintiff in Error, but are Defendant in Error here, to show cause, if any there be, why the judgment rendered against the said E. B. Spiller, now Plaintiff in Error, as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, The Honorable Walter H. Sanborn, Senior United States Circuit Judge for the Eighth Circuit, this first day of June, A. D. 1918.

WALTER H. SANBORN,
Senior United States Circuit Judge for the Eighth Circuit.

Copy of foregoing received June 4, 1918.

THOMAS R. MORROW,
Attorney for The Atchison, Topeka & Santa Fe Railway Company.

No. 4819. E. B. Spiller, Plaintiff in Error, vs. The Atchison, Topeka and Santa Fe Railway Company.

Citation on Writ of Error from Supreme Court, U. S.

Filed Jun. 6, 1918. E. E. Koch, Clerk.

511 United States of America, To Chicago and Eastern Illinois Railroad Company,—Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, wherein E. B. Spiller was Defendant in Error, and is Plaintiff in Error here, and you were Plaintiff in Error, but are Defendant in Error here, to show cause, if any there be, why the judgment rendered against the said E. B. Spiller, now Plaintiff in Error, as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, The Honorable Walter H. Sanborn, Senior United States Circuit Judge for the Eighth Circuit, this first day of June, A. D. 1918.

WALTER H. SANBORN,
Senior United States Circuit Judge for the Eighth Circuit.

Received a copy of the foregoing notice this the 4th day of June, 1918.

W. F. EVANS & INGRAHAM,
GUTHRIE & DURHAM.
Attys. for C. & E. I. R. R. Co.

No. 4820. E. B. Spiller, Plaintiff in Error, vs. Chicago and Eastern Illinois Railroad Company.

Citation on Writ of Error from Supreme Court, U. S.

Filed Jun. 6, 1918. E. E. Koch, Clerk.

512 United States of America, To Chicago and Alton Railroad Company,—Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C.,

within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, wherein E. B. Spiller was Defendant in Error, and is Plaintiff in Error here, and you were Plaintiff in Error, but are Defendant in Error here, to show cause, if any there be, why the judgment rendered against the said E. B. Spiller, now Plaintiff in Error, as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, The Honorable Walter H. Sanborn, Senior United States Circuit Judge for the Eighth Circuit, this first day of June, A. D. 1918.

WALTER H. SANBORN,
Senior United States Circuit Judge
for the Eighth Circuit.

Service of the foregoing is hereby acknowledge this 5th day of June, 1918.

CHAS. M. MILLER,
Atty. for Chicago & Alton Railroad Co.

No. 4821. E. B. Spiller, Plaintiff in Error, vs. Chicago and Alton Railroad Company.

Citation on Writ of Error from Supreme Court, U. S.

Filed Jun. 6, 1918. E. E. Koch, Clerk.

513 United States of America, To Missouri Pacific Railway Company,—Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, wherein E. B. Spiller was Defendant in Error, and is Plaintiff in Error here, and you were Plaintiff in Error, but are Defendant in Error here, to show cause, if any there be, why the judgment rendered against the said E. B. Spiller, now Plaintiff in Error, as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, The Honorable Walter H. Sanborn, Senior United States Circuit Judge for the Eighth Circuit, this first day of June, A. D. 1918.

WALTER H. SANBORN,
Senior United States Circuit Judge
for the Eighth Circuit.

Service of a copy of foregoing acknowledged this 5th day of June, 1918.

EDW. J. WHITE and
THOS. HACKNEY,
Attys. for Missouri Pacific Ry. Co.

No. 4822. E. B. Spiller, Plaintiff in Error, vs. Missouri Pacific Railway Company.

Citation on Writ of Error from Supreme Court, U. S.

Filed Jun. 6, 1918. E. E. Koch, Clerk.

514 United States of America, To St. Louis, Iron Mountain & Southern Railway Company,—Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, wherein E. B. Spiller was Defendant in Error, and is Plaintiff in Error here, and you were Plaintiff in Error, but are Defendant in Error here, to show cause, if any there be, why the judgment rendered against the said E. B. Spiller, now Plaintiff in Error, as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, The Honorable Walter H. Sanborn, Senior United States Circuit Judge for the Eighth Circuit, this first day of June, A. D. 1918.

WALTER H. SANBORN,
Senior United States Circuit Judge
for the Eighth Circuit.

Service of a copy of the foregoing acknowledged this 5th day of June, 1918.

EDW. J. WHITE and
THOS. HACKNEY,
Attys. for St. Louis. Iron Mountain
and Southern Railway Company.

No. 4823. E. B. Spiller, Plaintiff in Error, vs. St. Louis, Iron Mountain & Southern Railway Co.

Citation on Writ of Error from Supreme Court, U. S.

Filed Jun. 6, 1918. E. E. Koch, Clerk.

515 United States of America,—ss.

To St. Louis & San Francisco Railroad Company,—Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, wherein E. B. Spiller was Defendant in Error, and is Plaintiff in Error here, and you were Plaintiff in Error, but are Defendant in Error here, to show cause, if any there be, why the judgment rendered against the said E. B. Spiller, now Plaintiff in Error, as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, The Honorable Walter H. Sanborn, Senior United States Circuit Judge for the Eighth Circuit, this first day of June, A. D. 1918.

WALTER H. SANBORN,
Senior United States Circuit Judge
for the Eighth Circuit.

Service of copy of above notice received this 4th day of June, 1918.

W. F. EVANS and INGRAHAM,
GUTHRIE & DURHAM,
Attys. for St. L. & S. F. R. R. Co.

No. 4824. E. B. Spiller, Plaintiff in Error, vs. St. Louis and San Francisco Railroad Company.

Citation on Writ of Error from Supreme Court, U. S.

Filed Jun. 6, 1918. E. E. Koch, Clerk.

516 United States of America, To Chicago, Rock Island & Pacific Railway Company,—Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, wherein E. B. Spiller was Defendant in Error, and is Plaintiff in Error here, and you were Plaintiff in Error, but are Defendant in Error here, to show cause, if any there be, why the judgment rendered against the said E. B. Spiller, now Plaintiff in Error, as in the

said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, The Honorable Walter H. Sanborn, Senior United States Circuit Judge for the Eighth Circuit, this first day of June, A. D. 1918.

WALTER H. SANBORN,
Senior United States Circuit Judge
for the Eighth Circuit.

Service of the above citation is hereby acknowledged, this the 5th day of June, 1918.

PAUL E. WALKER,
By F. P. S.,
Attorney for Chicago, Rock Island & Pacific Ry. Co.

No. 4825. E. B. Spiller, Plaintiff in Error, vs. Chicago, Rock Island and Pacific Railway Company.

Citation on Writ of Error from Supreme Court, U. S.

Filed Jun. 6, 1918. E. E. Koch, Clerk.

517 United States of America, To Illinois Central Railroad Company,—Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, wherein E. B. Spiller was Defendant in Error, and is Plaintiff in Error here, and you were Plaintiff in Error, but are Defendant in Error here, to show cause, if any there be, why the judgment rendered against the said E. B. Spiller, now Plaintiff in Error, as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, The Honorable Walter H. Sanborn, Senior United States Circuit Judge for the Eighth Circuit, this first day of June, A. D. 1918.

WALTER H. SANBORN,
Senior United States Circuit Judge
for the Eighth Circuit.

518 State of Missouri,
County of Jackson—ss.

B. F. Deatherage, being duly sworn on his oath says, that he served the foregoing citation on the Illinois Central Rail-

road Company, by delivering a true copy thereof to Thomas R. Morrow, who appeared of record as attorney for said Railroad Company in the trial of said case in the United States District Court for the Western Division of the Western District of Missouri, and who also appeared as attorney for said Company on the [breifs] in said case in behalf of said Company in the United States Circuit Court of Appeals for the Eighth Circuit; also by mailing a copy of said citation, postage prepaid, addressed to the President of the Illinois Central Railroad Company, at Chicago, Illinois and also to R. V. Fletcher, General Attorney of said Co; all done June 5, 1918.

B. F. DEATHERAGE.

Subscribed and sworn to before me this 5th day of June, 1918.

My commission expires January 27, 1920.

(Seal) I. C. VAN DEVENTER,
Notary Public.

No. 4826. E. B. Spiller, Plaintiff in Error, vs. Illinois Central Railroad Company.

Citation on Writ of Error from Supreme Court, U. S.

Filed Jun. 6, 1918. E. E. Koch, Clerk.

519 United States of America, To Missouri, Kansas & Texas Railway Company,—Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, wherein E. B. Spiller was Defendant in Error, and is Plaintiff in Error here, and you were Plaintiff in Error, but are Defendant in Error here, to show cause, if any there be, why the judgment rendered against the said E. B. Spiller, now Plaintiff in Error, as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, The Honorable Walter H. Sanborn, Senior United States Circuit Judge for the Eighth Circuit, this first day of June, A. D. 1918.

WALTER H. SANBORN,
Senior United States Circuit Judge
for the Eighth Circuit.

Received copy of above this 4 day of June 1918.

J. W. JAMISON,
C. S. BURG,
Attys. for M. K. & T. Ry. Co.

No. 4827. E. B. Spiller, Plaintiff in Error, vs. Missouri, Kansas and Texas Railway Company.

Citation on Writ of Error from Supreme Court, U. S.

Filed Jun. 6, 1918. E. E. Koch, Clerk.

520 (Bond on Writ of Error from Supreme Court, U. S., in Causes Nos. 4819 to 4827, incl.)

Know all men by these presents That we, E. B. Spiller as principal and Massachusetts Bonding and Insurance Company a corporation as surety, are held and firmly bound unto the Atchison, Topeka and Santa Fe Railway Co., The Chicago and Eastern Ill. Railroad Co., The Chicago and Alton Railroad Company; The Missouri — Pacific Railway Company, St. Louis, Iron Mountain and Southern Railway Co., St. Louis and San Francisco Railroad Co., Chicago, Rock Island and Pacific Railway Company, Illinois Central Railroad Co., Missouri, Kansas and Texas Railway Co., in the full and just sum of One Thousand ($1,000) Dollars to be paid to the said railway and railroad companies, their certain attorneys, successors or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, and successors jointly and severally by these presents. Sealed with our seals and dated this Third (3rd) day of June in the year of our Lord one thousand nine hundred and eighteen.

Whereas, lately at a term of the United States Circuit Court of Appeals for the Eighth Circuit, in a suit depending in said court between E. B. Spiller, Defendant in Error, and the above named Railroad and Railway Companies, Plaintiffs in Error, a judgment was rendered against the said Defendant in Error reversing the judgment rendered by the District Court of the United States for the Western Division of the Western District of Missouri, in favor of said Defendant in Error and remanding said cause to said District Court and the said E. B. Spiller, Defendant in Error, having obtained a Writ of Error from the Supreme Court of the United States to reverse the judgment of the United States Circuit Court of Appeals for the Eighth Circuit in the aforesaid suit.

521 Now, the condition of the above obligation is such, That if the said E. B. Spiller shall prosecute his writ of error to effect, and will answer all damages and costs, if he fail to

419

make his plea good, then the above obligation to be void; else to remain in full force and virtue.

In Witness Whereof, The said principal has hereunto set his hand and said surety has caused these presents to be executed by its proper officer with its corporate seal hereunto affixed.

E. B. SPILLER, (Seal)
(Seal) MASSACHUSETTS BONDING AND INSURANCE COMPANY,
By Paul R. Stinson, Attorney-in-fact.

Witness:
B. F. Deatherage.

Approved by:
Walter H. Sanborn,
Senior Judge U. S. Court of Appeals, Eighth District.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Jun. 7, 1918.

---

522 (Praecipe for Transcript on Writs of Error from Supreme Court, U. S., and acceptances and affidavit of service thereof, in Causes Nos. 4819 to 4827, incl.)

United States Circuit Court of Appeals, Eighth Circuit.

The Atchison, Topeka & Santa Fe Railway Company, Plaintiff in Error,
No. 4819. vs.
E. B. Spiller, Defendant in Error.

Chicago & Eastern Illinois Railroad Company, Plaintiff in Error,
No. 4820. vs.
E. B. Spiller, Defendant in Error.

Chicago & Alton Railroad Company, Plaintiff in Error,
No. 4821. vs.
E. B. Spiller, Defendant in Error.

The Missouri Pacific Railway Company, Plaintiff in Error,
No. 4822. vs.
E. B. Spiller, Defendant in Error.

St. Louis, Iron Mountain & Southern Railway Company, Plaintiff in Error,
No. 4823. vs.
E. B. Spiller, Defendant in Error.

St. Louis & San Francisco Railroad Company, Plaintiff in Error,
No. 4824. vs.
E. B. Spiller, Defendant in Error.

523 Chicago, Rock Island & Pacific Railway Company, Plaintiff in Error,
No. 4825. vs.
E. B. Spiller, Defendant in Error.

Illinois Central Railroad Company, Plaintiff in Error,
No. 4826. vs.
E. B. Spiller, Defendant in Error.

Missouri, Kansas & Texas Railway Company, Plaintiff in Error,
No. 4827. vs.
E. B. Spiller, Defendant in Error.

You will please prepare a transcript of the record in this cause to be filed in the office of the Clerk of the Supreme Court of the United States under the writs of error heretofore allowed by said Court, and include in said transcript:

(1) The entire record filed in your office from the Clerk of the United States District Court for the Western Division of the Western District of Missouri.

(2) A complete record of the proceedings, orders and judgments in the United States Circuit Court of Appeals for the Eighth Circuit, including the opinion of said Court filed October 17, 1917, and the supplemental opinion filed March 1, 1918.

(3) Petition of plaintiff, E. B. Spiller for writs of error from the United States Supreme Court to the United States Circuit Court of Appeals for the Eighth Circuit, together with the assignments of error thereto attached.

(4) Order of Judge Sanborn, Senior Judge of said United States Circuit Court of Appeals allowing said petition for writs of error.

524 (5) The writs of error issued herein.

(6) The citations issued herein by Judge Sanborn.

(7) The bond of plaintiff in error.

(8) Copy of this praecipe, with proof of service thereof.

I. H. BURNEY,
S. H. COWAN,
G. CREASON,
B. F. DEATHERAGE,
Attorneys for Plaintiff in Error, E. B. Spiller.

Service of a copy of the foregoing praecipe is hereby accepted this June 5, 1918.

THOMAS R. MORROW,
Attorneys for The Atchison, Topeka and Santa Fe Railway Company.

J. W. JAMISON,
C. S. BURG,
Atty. for M. K. & T. Ry. Co.

Copy of the foregoing instrument received June 4th, 1918.

W. F. EVANS,
INGRAHAM, GUTHRIE & DURHAM,
Attys. for St. L. & S. F. R. R. Co. also C. & E. I. R. R. Co. Resp.

June 5, 1918

PAUL E. WALKER,
By F. P. S. Attorney for Chicago, Rock Island & Pacific Ry. Co.

June 5, 1918

EDW. J. WHITE &
THOS. HACKNEY,
Attys. for Missouri Pacific Ry. Co. & St. Louis, Iron Mountain & Southern Railway Company.

525 June 5th, 1918.

CHAS. M. MILLER,
Atty. for Chicago & Alton Railroad Co.

State of Missouri,
County of Jackson—ss.

B. F. Deatherage, being duly sworn on his oath says, that he served the foregoing praecipe and notice on the Illinois Central Railroad Company, by delivering a true copy thereof to Thomas R. Morrow, who appeared of record as attorney for said Railroad Company in the trial of said case in the United

States District Court for the Western Division of the Western District of Missouri, and who also appeared as attorney for said Company on the briefs in said case in behalf of said Company, in the United States Circuit Court of Appeals for the Eighth Circuit; also by mailing a copy of said praecipe, postage prepaid, addressed to the R. V. Fletcher, General Attorney of the Illinois Central Railroad Company, at Chicago, Illinois; all done this June 5, 1918.

B. F. DEATHERAGE,

Subscribed and sworn to before me this 5th day of June, 1918.

My commission expires January 27, 1920.

(Seal) I. C. VAN DEVENTER,
Notary Public.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Jun. 6, 1918.

---

526 (Clerk's Certificate.)

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Western District of Missouri as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of all the pleadings, record entries and proceedings, including the opinions, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, prepared in accordance with the praecipe of counsel for Defendant in Error, in certain causes in said Circuit Court of Appeals wherein The Atchison, Topeka and Santa Fe Railway Company was Plaintiff in Error and E. B. Spiller was Defendant in Error, No. 4819, and wherein the Chicago and Eastern Illinois Railroad Company was Plaintiff in Error and E. B. Spiller was Defendant in Error, No. 4820, and wherein the Chicago and Alton Railroad Company was Plaintiff in Error and E. B. Spiller was Defendant in Error, No. 4821, and wherein The Missouri Pacific Railway Company was Plaintiff in Error and E. B. Spiller was Defendant in Error, No. 4822, and wherein The

St. Louis, Iron Mountain and Southern Railway Company was Plaintiff in Error and E. B. Spiller was Defendant in Error, No. 4823, and wherein the St. Louis and San Francisco Railroad Company was Plaintiff in Error and E. B. Spiller was Defendant in Error, No. 4824, and wherein the Chicago, Rock Island and Pacific Railway Company was Plaintiff in Error and E. B. Spiller was Defendant in Error, No. 4825, and wherein the Illinois Central Railroad Company was Plaintiff in Error and E. B. Spiller was Defendant in Error, No. 4826, and wherein the Missouri, Kansas and Texas Railway Company was Plaintiff in Error and E. B. Spiller
527 was Defendant in Error, No. 4827, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original writs of error with the Clerk's returns endorsed thereon and the original citations with the acknowledgments and affidavits of service endorsed thereon are hereto attached and herewith returned.

I do further certify that on the twenty-sixth day of March, A. D. 1918, mandates were issued out of said Circuit Court of Appeals in each cause, directed to the Judges of the District Court of the United States for the Western District of Missouri.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this seventh day of June, A. D. 1918.

(Seal)

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Endorsed on cover: File No. 26,593. U. S. Circuit Court of Appeals, 8th Circuit. Term No. 507. E. B. Spiller, plaintiff in error, vs. Atchison, Topeka and Santa Fe Railway Company. File No. 26,594. Term No. 508. E. B. Spiller, plaintiff in error, vs. Chicago and Eastern Illinois Railroad Company. File No. 26,595. Term No. 509. E. B. Spiller, plaintiff in error, vs. Chicago and Alton Railroad Company. File No. 26,596. Term No. 510. E. B. Spiller, plaintiff in error, vs. The Missouri Pacific Railway Company. File No. 26,597. Term No. 511. E. B. Spiller, plaintiff in error, vs. St. Louis, Iron Mountain and Southern Railway Company. File No. 26,598. Term No. 512. E. B. Spiller, plaintiff in error, vs. St. Louis and San Francisco Railroad Company. File No. 26,599. Term No. 513. E. B. Spiller, plaintiff in error, vs. Chicago, Rock Island and Pacific Railway Company. File No. 26,600. Term No. 514. E. B. Spiller, plaintiff in error, vs. Illinois Central Railroad Company. File No. 26,601. Term No. 515. E. B. Spiller, plaintiff in error, vs. Missouri, Kansas and Texas Railway Company. Filed June 17th, 1918. File Nos. 26,593 to 26,601.

INDEX.

Page

Petition for Certiorari . . . . . 1 to 19

Questions Sought to be Reviewed 1

History of the Litigation 3

Grounds for asking this court to review the decision of the United States Circuit Court of Appeals 6

There was sufficient evidence before the Commission to show who owned the live stock shipped, who paid the excessive freight, and who was thereby damaged . . . 6

Sample of sheets submitted to carriers and of their check upon same 9

There was sufficient evidence to support the findings of the Commission that the claims had been legally assigned to your petitioner 10

Form of the Assignment 13

There was no objection of any kind before the Commission to the sufficiency of the proof of the assignments, or to the form, or that the legal title did not pass to the assignee, or that the claims were not assignable . 15

The questions involved in this case are of great public importance 17

Certiorari is a Proper Remedy 18

Conclusion 19

Brief in Support of Petition for Certiorari 20

There was sufficient proof of who owned the cattle and who paid the freight 22

The claim was assignable. The assignments were absolute in form and vested the legal title in the assignee. 24

Citations.

	Page
Comegys v. Vasse, 1 Pet. 193	24
5 Corpus Juris, 593	24
5 Corpus Juris, 958, 985, 994	24
4 Cyc. pp. 23-26	24
Davis v. R. R., 25 Fed. 786	24
Delk v. R. R., 220 U. S. 580	18, 20, 21
Denver v. N. Y. Transit Co., 229 U. S. 123	18
Dever Eng. Works, 179 Fed. 922	24
Eastern Texas Ry. Co. v. R. R. Com. of Texas, 242 Fed. 300, 305	3, 25
Edmunds v. Ill. Cent. R. R., 80 Fed. 78	24
Flannelly v. D. & H. Co., 225 U. S. 597	21
Forsyth v. Hammond, 166 U. S. 506, 512	21
George v. Tate, 102 U. S. 564	24
Hitchman Coal Co. v. Mitchell, 38 Sup. Ct. Rep. Advanced Opinion, Jan. 1, 1918	20
Ill. Cent. R. R. v. I. C. C., 206 U. S. 441	25
I. C. C. v. Alabama & M. R. Co., 168 U. S. 146	26
I. C. C. v. Baird, 194 U. S. 44	22
I. C. C. v. C. R. I. & P. Ry. Co., 214 U. S. 40	2
I. C. C. v. C. R. I. & P. Ry. Co., 218 U. S. 110	3, 22, 25
I. C. C. v. Del. L. & W. R. R, 220 U. S. 235	25
I. C. C. v. Ill. Cent. R. R., 215 U. S. 452	25
I. C. C. v. Ill. Cent. R. R., 215 U. S. 470	26
I. C. C. v. L. & N. R. R. Co., 227 U. S. 88	3, 25, 26
I. C. C. v. L. & N. R. R., 227 U. S. 93	10, 22
I. C. C. v. Northern Pac., 216 U. S. 544	26
I. C. C. v. U. P. R. R., 222 U. S. 541, 545	26

Page

I. C. C. 11 p. 296 (Aug. 16, 1905) 3
Irwin v. U. S., 97 U. S. 396 24
L. & N. R. R. Co. v. Finn, 235 U. S. 606..... 3, 10, 17, 22
Meeker v. Lehigh Valley R. R. Co., 234 U. S. 749-750.. 18, 20
Meeker v. Lehigh Valley R. R. Co., 236 U. S. 412.... 18, 20
Mills v. Lehigh Valley, 238 U. S. 473 25
Mitchell C. & C. Co. v. Penn. R. R. Co., 230 U. S. 247.. 3, 25
Rucker v. Bolles, 80 Fed. 1. c. 510 24
St. L. & S. W. Ry. v. Samuels & Co., 211 Fed. 588.... 3, 26
So. Pac. Ry. v. Darnell, decided Jan. 21, 1918..... 6
Southern Pac. Co. v. I. C. C., 219 U. S. 433..... 26
Southern Pac. Ry. v. Tift, 206 U. S. 428 25
Texas & Pac. R. R. v. Abilene Oil Co., 204 U. S. 426.. ..... 2, 3, 25, 25
The Conqueror, 166 U. S. 114 18
The Three Friends, 166 U. S. 1. c. 49 21
U. S. v. L. & N. R. R. Co., 235 U. S. 314..... 3, 25
U. S. v. L. & N. R. R., 235 U. S. 320..... 26

No. .....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1918.

E. B. SPILLER, PETITIONER,

VS.

ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY, MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY, CHICAGO & ALTON RAILROAD COMPANY, MISSOURI PACIFIC RAILWAY COMPANY, ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY AND ILLINOIS CENTRAL RAILROAD COMPANY, RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO BE ADDRESSED TO THE UNITED STATES CIRCUIT COURT OF APPEALS AND THE JUDGES THEREOF FOR THE EIGHTH CIRCUIT.

Your petitioner respectfully shows:

I.

Questions Sought to be Reviewed.

The questions sought to be reviewed in this proceeding are set out in the decision of the Circuit Court of Appeals for the Eighth Circuit construing the act to regulate commerce relative to the recovery of reparation awarded by the Interstate Commerce

Commission by reason of an excessive rate charged by respondents on shipments of cattle from Texas, Oklahoma, New Mexico, Colorado and Kansas, to the markets at Kansas City, St. Louis and Chicago.

Your petitioner respectfully avers that the Circuit Court of Appeals erroneously held, in effect:

First. That there was no proof before the commission of who owned the live stock shipped and who paid the excessive freight and consequently who was damaged thereby and therefore the order of reparation was void.

Second. That there was not sufficient evidence to support the finding of the commission that the claims had been legally assigned to your petitioner and in further holding that, conceding there was, the evidence showed that the purpose of the assignment was not such as to vest the legal title of the claims in petitioner so as to authorize the commission to make the award of damages to him and therefore the order of reparation was void.

Third. That in proceedings before the Interstate Commerce Commission, counsel are not required to present objections to inadmissible testimony with the same nicety as in an action in court, and that testimony, although it might be hearsay but not objected to when offered, was not to be considered in support of the Commission's order.

Fourth. That in an action on a reparation order of the Interstate Commerce Commission in favor of shippers based on the exaction of unreasonable rates which were held by the Commission to be unreasonable, the question whether the rate exacted was unjust and unreasonable is open for determination by the court or jury, contrary to the decision of this Court in *Texas & Pac. R. R. Co.* v. *Abilene Oil Co.*, 204 U. S. 426; *I. C. C.* v. *C. R. I. & P. Ry. Co.*, 218 U. S. 40.

Fifth. That where a rate subsequently condemned by the Interstate Commerce Commission as unreasonable was when exacted a legal rate, the shipper could not sue in a court of law and recover back any portion of such rate.

Sixth. That in fixing the rate for a period of two years in the future and granting reparation for the exaction of the unreasonable rate during a period of two years prior to the time of the order fixing the rate for the future, the Commission in effect

establishes the rate for a longer period than authorized and therefore the order of reparation was improper and the shipper could not recover the difference between the rate paid and the rate found to be reasonable at the time of such payment.

Seventh. That the court has the power to set aside an order of reparation made by the Commission and hold it to be invalid in a collateral proceeding based upon such order to recover reparation to which the Commission is not a party.

Eighth. That where the respondents did not, under Section 16a of the Act to Regulate Commerce, apply to the Commission for a rehearing, they were not, in a collateral proceeding based upon such findings and order to recover reparation, precluded from claiming the findings and order of the Commission were invalid because not supported by sufficient evidence.

Ninth. That sufficiency of the proof and validity of the assignments to petitioner could be passed upon by the Appellate Court although no such questions were presented to the Commission.

The decision of the Circuit Court of Appeals upon the questions as stated above, your petitioner avers is in conflict with the decision in *L. & N. R. R. Co.* v. *Finn*, 235 U. S. 606, and *Texas & P. R. R. Co.* v. *Abilene Oil Co.*, 204 U. S. 426; *I. C. C.* v. *C. R. I. & P. Ry. Co.*, 218 U. S. 110; *Mitchell C. & C. Co.* v. *Penn. R. R. Co.*, 230 U. S. 247; *I. C. C.* v. *L. & N. R. R. Co.*, 227 U. S. 88; *U. S.* v. *L. & N. R. R. Co.*, 235 U. S. 314; *Eastern Texas R. Co.* v. *Railroad Com. of Texas*, 242 Fed. 300, 305; *St. L. & S. W. Ry. Co.* v. *Samuels & Co.*, 211 Fed. 588.

History of the Litigation.

Your petitioner further shows that in March, 1903, the respondents and other railroads made an advance of three cents per hundred pounds, in addition to certain advances made in 1899 and 1900 in freight rates on cattle shipped from Texas, Oklahoma and other territory to Eastern markets.

In February, 1904, the Cattle Raisers' Association of Texas in behalf of its members and all others interested, under Section 13 of the Act to Regulate Commerce, filed its petition with the Interstate Commerce Commission, charging that the rates established in 1903 were unjust and unreasonable.

The Commission on August 16, 1905, decided (11 I. C. C. 296) that the advances were unjust and unreasonable. At that

time the commission was not empowered to fix rates for the future. The Hepburn bill passed June 28, 1906, gave the Commission such power, effective August 28, 1906. On August 29, 1906, the Cattle Raisers' Association, on behalf of its members and others interested, filed a motion to reopen the case for further hearing in order that the Commission might fix the rates for the future. The motion was granted and on April 14, 1908, the Commission again found the rates as increased in 1903 were unjust and unreasonable and in July, 1908, made an order prescribing as reasonable rates those which were in effect previous to the advances made in 1903, the difference being three cents per hundred pounds in most cases. Thereafter the respondents and other carriers filed suit in the United States Circuit Court at St. Louis to enjoin the enforcement of the rates prescribed by the Commission. A preliminary restraining order was denied (164 Fed. 645) and subsequently after a full hearing upon voluminous testimony and briefs and argument before a Master in Chancery, and upon the Master's report before Judges Van Devanter, Adams and Sanborn, the writ of injunction was denied and the bill dismissed (decision not published). The reduced rates took effect November 17, 1908.

After the decision of the United States Circuit Court at St. Louis upholding the decision of the Commission on the unreasonableness of the advanced rates and the reasonableness of the rates fixed by the Commission for two years in the future, the Cattle Raisers' Association, for and on behalf of its members and other shippers, presented to and filed with the Interstate Commerce Commission claims for reparation based upon the payment of rates found unreasonable.

All the claims were filed within the time limit provided by law, which fact was admitted by respondent's counsel at the trial in the District Court (Trans. p. 356). The claims were all filed for and in the name of the owners of the cattle shipped. Some of the claims had been assigned to H. E. Crowley, Secretary and Manager of the Cattle Raisers' Association. He was succeeded as such secretary and manager by your petitioner, and Mr. Crowley assigned to your petitioner all claims assigned to him. Many of the other claims were assigned to your petitioner. All of the claims involved in this case were assigned to your petitioner after the same were filed and before the Commission made its order of reparation herein. The assignments were made from time to time.

There were three hearings before the Commission on the claims for reparation, viz. September 19-20, 1912, January 24, 1913, October 17, 1913. At the first hearing there was much discussion between counsel for both sides and Commissioner Prouty as to the best method of proving the shipments, who were the owners, who paid the freight, and the amount and measure of damages. At Commissioner Prouty's suggestion, abstracts of all the claims were prepared by your petitioner, showing all claims of each shipper against each railroad, point of origin, destination, consignor, consignee, owner, number of cars, date of shipment, weights, rate paid, rate ordered, and difference of the two rates, and such abstracts or copies thereof were furnished each carrier to check with their records (see Exhibit 2, page 330). At the next hearing the carriers reported and by counsel before the Commission admitted the movement of certain of the cars as stated and the payment of the charges. No claims not checked by the railroads were allowed by the Commission. The Commission so states in its report and findings of fact. Reference to the testimony before the Commission will be made hereafter. The Commission made findings of fact, which is shown in full at page 122 of the transcript, and ordered each respondent to pay to your petitioner as assignee of the owner the amounts set forth in Appendix A attached to the Commission's supplemental report. The findings and order of the Commission were made on January 12, 1914. No question arises as to the sufficiency of the findings. The order was duly served upon each respondent. Within one year thereafter the petitioner commenced this suit to recover from each respondent the amounts ordered to be paid together with a reasonable attorney's fee. The suit was under Section 16 of the Act to Regulate Commerce, and all the respondents were joined as defendants as provided by that section.

At the trial in the District Court, your petitioner introduced the findings and order of the Commission and proof as to reasonable attorney's fees, and rested. The respondents introduced a transcript of the evidence before the Commission on the hearing for reparation, and some testimony showing error in the amounts allowed against the Illinois Central, which errors were corrected by the District Court. Respondents introduced no other testimony bearing upon any of the questions here raised. The District Court gave judgment for your petitioner, the total amount aggregating $181190.87. Each respondent sued out a separate

writ of error from the judgment against it from the United States Circuit Court of Appeals for the Eighth Circuit, but by stipulation the case was heard in the Court of Appeals on the record in the case of the Atchison, Topeka & Santa Fe Railroad Company.

On October 26, 1917, the Court of Appeals decided the case, reversed the lower court and remanded the case and ordered a new trial (246 Fed. 1).

Your petitioner in due time filed a petition for rehearing in the said United States Circuit Court of Appeals which was overruled on March 11, 1918, but that court modified its opinion as to the proof and measure of damages and withdrew all that part of its opinion on that question insofar as it conflicted with the decision of this court in *Southern Pacific Co.* v. *Darnell-Taenzer Lumber Co.*, decided January 21, 1918.

Grounds for Asking this Court to Review the Decision of the United States Circuit Court of Appeals.

Your petitioner believes that the decision of the United States Circuit Court of Appeals is erroneous and that this Honorable Court should require this cause to be certified to it for its review and determination because

A.

There was sufficient evidence before the Commission to show who owned the live stock shipped, who paid the excessive freight, and who was thereby damaged.

A careful reading and consideration of the evidence before the Commission, much of which is not quoted in the opinion of the Circuit Court of Appeals, although that court quoted extensively from the record, it seems to us shows there was evidence to support the findings, in that:

1. All the shipments were made to commission houses for sale on the market *for the owners.*

2. That the commission houses paid the freight, deducted it from the proceeds of sale and remitted *to the owner* the balance of the proceeds of sale.

3. That the commission houses' books showed the names of *the actual owners* of the cattle and not the caretakers.

4. That the commission companies furnished to the Cattle Raisers' Association slips showing only the names *of the owners,* the number of cars, date of delivery of shipment, point of origin, destination, weights, delivering carrier and freight paid.

5. That Mr. S. H. Cowan, attorney for the claimants, knew this custom of the commission companies and stated it as a fact, and that the commission houses had furnished such statements.

6. That Mr. Williams, assistant secretary of the Cattle Raisers' Association, a witness before the Commission, heard Mr. Cowan's statement and testified under oath that it was true; that Mr. Williams knew of his own knowledge such custom of the commission houses and testified to it.

7. That Mr. Brooks, live stock agent of the Santa Fe Railway, knew such custom and so stated it to the Commission (p. 235).

Mr. Cowan: "Now, Mr. Brooks, your billing will show the name of the caretaker?

Mr. Brooks: "Yes, sir."

Mr. Cowan: Your billing does not show the name of the owner?

Mr. Brooks: No.

Mr. Cowan: *The commission companies' books, however, do show the name of the owner?*

Mr. Brooks: Yes."

8. That Mr. Norton, attorney for the Santa Fe, at the second hearing before the Commission, when Mr. Cowan offered to call Mr. Moore, bookkeeper for Evans-Snider-Buell Company, a commission company doing a very large business, and who had the books of that company present in order to prove the custom and course of procedure. Mr. Norton said:

"I think that was stated in the other hearing—I think our own live stock agent stated that."

"Mr. Cowan: I think he did."

9. That lists of all the claims purporting to show the names of all the owners were furnished the carriers, who checked the same; that such lists were filed with the Commission, showing the cars and shipments checked by each carrier as having moved as stated and the excessive freight was paid as stated, and that Mr. Fletcher, one of the counsel for the carriers, requested that filing of the list be withheld temporarily for the purpose of allowing the carriers to check the names of the owners as shown on the lists with the names of the consignors as shown by the carriers' books, which was done (284).

10. That it was repeated over and over again before the Commission, by the commissioner, by counsel for claimant, by the witness, Williams, as to what was the custom and course of procedure of the commission companies; that the commission companies paid no attention to the names of caretakers who might accompany the cattle to market, and in whose names some of the shipments were made; that the account books of the commission companies were kept in the names of the owners only; that the names of the owners only were furnished to the Cattle Raisers' Association who filed the claims; that in the lists of names no names except the actual owners were shown; that the freight was paid by the commission companies and charged to the owners, deducted from the proceeds and the balance remitted to the owners; that as a rule the owners did not keep books or records of their shipments, but depended upon the books of the commission companies to whom they referred the Association for proof and details of such shipment; that claimants offered to produce the books of the commission companies, or have an examiner of the Commission examine them; that some of the books were brought before the Commission; that the carriers admitted such books would be evidence of what they purported to show; that the reason the books were not examined was because the respondents checked the claims with their own books and admitted the movement of the freight as stated, and *the Commission understood from the admissions made that the only questions left open was whether the shippers were damaged.* That the Commissioner was of the opinion and so found that payment of the excessive rate imported damage and that the measure of damages was the difference in the rate condemned as unreasonable and the rate found to be reasonable at the time of shipment. Counsel for the carriers admitted the course of business of the commission houses was as stated (279).

A fair sample of the admissions made by the carriers before the Commission is shown at pages 297-305 of the record, which we do not quote in order to comply with the rules of this court concerning brevity.

A sample of the sheets submitted to the carriers and of their check upon the same was introduced before the District Court and is as follows:

J. A. Patterson, Claimant,
347 Estelline, Tex.
In Account With
Atchison, Topeka & Santa Fe Ry Co., Delivering Line.

Consignor.	Consignee.	Originating Road.	Point of Origin.	Destination.	Date of Delivery.	Number Cars.	Rate Paid.	Rate Ordered.	Amount Overcharge.
				(In pencil) St. Joseph, Mo.					(In pencil) $33.12
J. A. Patterson.		T. T. Ft. W. & D. C. Ry.	Estilline, Tex.		4 July 22, 1908	5	34.5c 31.5c	$33.00	
(In Pencil)	(7-20-08	W.B.	97 car No.	S.W.	3585	Wt. 22,000	frt. 7590	Rptd.	July 22-08)
	(" "	"	98 " "	C&S	11074	" 22,000	" 7590	"	" ")
	(" "	"	99 " "	"	1598	" 22,200	" 7659	"	" ")
	(" "	"	100 " "	" D.C.	1063	" 22,000	" 7590	"	" ")
	(" "	"	101 " "	C.B.Q.	62375	" 22,200	" 7659	"	" ")
						110,400			
						3			
						33,12%			
									33.00
									(33.12)

That part in parenthesis was put on the sheet by the Santa Fe in checking and shows the actual weights and that the amount collected on those five cars was in fact twelve cents more than claimed. That the company admitted the movement of those cars as stated.

The findings and order of the Commission are shown at pages 122 to 211 of the record, and they set forth every fact required by law to be found by the Commission.

To reject all such testimony it seems to us the Circuit Court of Appeals ignored that part of the Commerce Act. Sec. 13, which empowers "The Commission to investigate the matters complained of *in such manner and by such means as it shall deem proper.*" And Sec. 17, "That the Commission may conduct its proceedings in such manner as will best conduce to the proper despatch of business and to the ends of justice," and that the decision is in conflict with the decision of this court in *L. & N. R. R. v. Finn*, 235 U. S. 606-608. In the Finn case this court considered the statements of a Mr. Goodwyn, *tho' not under oath* and also a colloquy between counsel, which coupled with the answer of the carrier, this court held "in effect conceded that the particular amounts claimed were proper to be awarded as reparation."

The Finn case is a precedent for asserting that in proceedings before the Commission statements of counsel and other parties before the Commission, *although not under oath are receivable as evidence and considered in determining whether there is any evidence to support the findings of the commission.*

The Interstate Commerce Commission "is not limited by the strict rules as to the admissibility of evidence which prevailed in suits between private parties." *I. C. C. v. L. & N. R. R.*, 227 U. S. 93.

B.

There was sufficient evidence to support the findings of the Commission that the claims had been legally assigned to your petitioner. Such assignments were absolute in form and passed the legal title to the claims to your petitioner and authorized making the award of reparation to him. The rights assigned were property rights and would survive the death of the assignors.

Denial of this proposition was not made before the Commission. It was raised for the first time in the Circuit Court of Appeals. The respondents pleaded that claims for reparation are not assignable. That point was decided against them by the District Court and not passed upon by the Appellate Court. The Appellate Court fell into error on the facts. It said:

"Some of the claims if assigned at all were assigned to Crowley, others to Spiller, others still, and it did not appear which ones, were simply placed with the Cattle Raisers' Association for collection."

The record discloses and the Commission found exactly what claims were assigned to Crowley, also that all such claims were assigned by Crowley, to your petitioner. It also shows exactly what claims were assigned to your petitioner in the first instance. It also shows exactly what claims were not assigned at all.

Attached to the Commission's report and order and made a part of it is Appendix "A" which shows the names of the claimants, amounts, dates, points of origin, destination, weights, delivering carrier rates paid, rates ordered. Appendix "A" shows the above facts about the assignments by the letter "C" or letter "S" or the absence of those letters—claims followed by the letter "C" were assigned to Crowley and afterwards by him to Spiller. Claims followed by the letter "S" were assigned in the first instance to Spiller—claims not followed by either the letter "C" or "S" were not assigned at all.

Claims not assigned were allowed and order made for reparation in the name of the original owners and are not involved in this case at all. Only those claims which had been assigned to Spiller before the order of reparation are sued on here. A few claims assigned to Spiller after the order was made are involved in another case.

Mr. Cowan and the Cattle Raisers Association represented all of the claims, those assigned and those not assigned.

The evidence as to the assignments was brief and was substantially as follows (page 315 of the Record):

"Mr. Cowan: I will ask you, Mr. Williams, to state whether you have stated in the list you have made up as has been mentioned by me, an indexed letter which shows the fact of the assignment of these claims?

Mr. Williams: I have.

Mr. Cowan: Have you set opposite each claim that has been assigned to H. E. Crowley when he was secretary and manager of the association the letter 'C'?

Mr. Williams: I have.

Mr. Cowan: Have you set opposite each claim that has been assigned to Mr. E. B. Spiller, secretary and general manager, the letter 'S'?

Mr. Williams: Yes, sir.

Mr. Cowan: *Do you know as a matter of fact that written assignments have been made and filed with the Cattle Raisers' Association and are on file in your office, showing these assignments?*

Mr. Williams: *Yes, sir.*

Mr. Cowan: *Is it not a fact that Mr. Crowdey, when he retired, or since he retired as secretary of the association, assigned over to Mr. Spiller, all the claims which had been assigned to Mr. Crowdey?*

Mr. Williams: *Yes, sir.*

Mr. Cowan: That is a written assignment?

Mr. Williams: Yes, sir.

Mr. Cowan: These assignments were taken for a nominal consideration and because the Cattle Raisers' Association were prosecuting these claims, and the secretary and general manager, being one office, had charge of the whole matter?

Mr. Williams: Yes, sir.

Mr. Cowan: Is it not a fact also that in different meetings of the Cattle Raisers' Association from year to year, at their annual meeting and convention, that the report of the executive committee of the association contained the reports of the attorney and secretaries and has shown the facts that these claims were prosecuted for the benefit of the owners of these claims?

Mr. Williams: Yes, sir.

Mr. Cowan: And that has been printed and widely circulated?

Mr. Williams: Yes, sir.

Mr. Cowan: And sent to every member of the association?

Mr. Williams: Yes, sir."

And at page 317 is the following:

"Commissioner Prouty: Take the claim of Mrs. Adair was that claim assigned?

Mr. Williams: Yes, sir.

Commissioner Prouty: Have you the assignment there? (Document handed to the Commissioner.)

What do you say, Mr. Cowan, as to the right of the owner to ask for an order, after having made this assignment?

Mr. Cowan: I do not think the owner has the right, after having made the assignment, to ask for an order. After having made the assignment, I think the assignee has the right.

Commissioner Prouty: Do you know the signature of Mrs. Adair?

Mr. Williams: That is signed by her bookkeeper, Mr. Lichertwood. I know his signature.

Mr. Cowan: These assignments have not been filed with the Commission, but we will file them.

Mr. Humburg: Unless they are filed, we suggest that there might be put in the record here one of them, so as to show just what the form is.

Commissioner Prouty: You might copy into the record that one of Mrs. Adair.

Mr. Cowan: Mr. Williams, will you give the stenographer a copy of the assignment?

The form of the assignment was the same in all cases, and was as follows:

"In consideration of One Dollar to me in hand paid by H. E. Crowley, Secretary, as well as other considerations good and valuable to me, I hereby transfer and assign to him absolutely, any and all right of action, claims, or demands which I now have, or may hereafter have, against each and every Railway Company over whose railroad I have shipped any cattle, for reparation or reimbursements on account of any excessive, unreasonable, discriminatory, or otherwise unlawful or unjust freight rates or other charges which I have paid to such railway company on such shipments, as per schedule of said shipments hereto attached.

Having assigned my said claim as aforesaid, I also delegate to said H. E. Crowley, Secretary, full authority in establishing said claim to collect data and evidence in relation thereto from all Commission Companies, persons or firms as if I were personally present and acting in the premises.

Witness my signature hereto.

.....

Sign here.

.....

Post-office address."

"Commissioner Prouty: You let us know right away, Mr. Cowan, whether you want the order made, if one is made, in favor of the original owner, or in favor of the assignee.

Mr. Cowan: I want it in favor of the assignee, in all cases where we have an assignment. We have considered the matter quite thoroughly and we think—and I will brief that point and submit it to the Commission—that we are entitled to the order on behalf of the manager."

And at p. 318:

"Commissioner Prouty: Now, of course, there is no proof here that the assignments have been executed by the persons who purport to execute them, but I take it, gentlemen of the defense, it would not be your desire to put Mr. Cowan to the necessity of making proof in each individual case. There is no doubt about it, I suppose, and we will find, unless there is some objection, that this assignment was regularly made by the person purporting to execute it.

Mr. Cowan: I will just ask Mr. Williams now if it is not a fact that the Cattle Raisers' Association, through its secretary and general manager, sent these assignments through the mails to the parties who were the owners of the claims shown in the list submitted, and requested them to sign the assignment, and send it back to the Cattle Raisers' Association?

Mr. Williams: By the person in authority to do so, yes, sir.

Mr. Cowan: Take the case of Mrs. Adair. She lives in England?

Mr. Williams: Yes, sir.

Mr. Cowan: When the cattle are shipped for Mrs. Adair—

Commissioner Prouty: I don't think you need to go into that; unless there is some objection we will find the fact of the assignment according to the language of the assignment itself in all these cases where an assignment has been made, and you indicate in whose favor the order should be made in all cases."

There was no objection recorded as to the proof of the assignment.

And at p. 321, the following:

"Mr. Humburg: May I ask Mr. Williams a question, Your Honor?

Commissioner Prouty: Yes.

Mr. Humburg: Mr. Williams, these assignments are of three different kinds, as I understand; first, an assignment from the proposed consignor to the general manager and secretary of your Association; is that true?

Commissioner Prouty: They are to some individuals.

Mr. Williams: There are two individuals there, the general manager and the secretary, but the assignment form is the same.

Mr. Humburg: It is the same from the supposed consignor to the secretary of the Association?

Mr. Williams: Yes.

Mr. Humburg: The same in form?

Mr. Williams: Yes.

Mr. Humburg: Now, that secretary, I understood you to say, made a subsequent assignment to another secretary; is that true?

Mr. Williams: The first one did, yes, sir.

Mr. Humburg: Can you furnish for the record a copy of that second assignment?

Mr. Williams: *I have the original here.*

Mr. Cowan: *We will furnish that.*

Mr. Hamburg: Is the form the same—well, it will be furnished. Now, as to the dates of those several assignments, when were the claims originally assigned?

Mr. Williams: *Well, these forms (assignments) are dated all along. Some of them bear only recent dates, some of them are dated back from the time of Mr. Crowley as general manager. There has been no need of any rush, we thought, in securing the assignments, as our authority to file them has been acknowledged by the parties interested. It was only a matter of form, these assignments, and it was recognized they would give them to us when they were wanted.*

Mr. Humburg: That is all."

There was no objection of any kind before the Commission to the sufficiency of the proof of the assignments, or to the form thereof or that the legal title did not pass to the assignee, or that the claims were not assignable.

The proposition that "the evidence showed the purpose of the assignment was not such as to vest the legal title in Spiller so as to authorize the Commission to make the award to him" was not pleaded nor argued in the court below nor before the Commission. We have carefully read and re-read the record before the Commission and failed to find a single objection therein made by any of the carriers to the assignments based upon the claim that the assignments did not vest the legal title in the assignee. We have failed to find any objection before the Commission, based upon the ground that the claims were not assignable. There was no objection before the Commission to the assignments on any ground. There was a colloquy between the Commission and counsel for the claimants as to whether the order of reparation should be in the name of the claimants or of the assignee, but none of the carriers asserted the legal title did not vest in Spiller by virtue of the assignments. The objection was that proof that the owner of the cattle paid the freight was insufficient (Record, p. 320).

"Now is there anything more to be said about this case, gentlemen, today?

Mr. Dickinson: I would like to suggest that it may be true as far as my knowledge goes, *that there is a universal custom of the commission houses to deduct freight charges from the invoice and remit the balance to the consignor, but I do not feel at liberty to admit the sufficiency or the competency of the proof that has so far been offered to sustain that proposition in this case.*

Mr. Cowan: How should I be able to prove it if it is a fact? Do you want somebody from a commission house that is thoroughly familiar with it?

Mr. Dickinson: Of course, I am not making the proof. *I do not think it would be right for me to sit here silently and by my silence admit that you have proved that fact, so far as you have proceeded in this case.*

Commissioner Prouty: My impression is that it appears the owner made a shipment of live stock to a commission merchant and the freight was paid and the cattle sold by the commission merchant. Did not one of these commission merchants appear here?

Mr. Williams: We brought one here, but they would not let him go on the stand.

Commissioner Prouty: We will look over the record in that respect, but my impression is the Commission will find from the present record, that the owner paid the freight. He sent the cattle to market, sent them to a commission man, and in the ordinary course of business he paid the freight.

Mr. Dickinson: That may be the usual custom, Your Honor, I am not disputing it, but—

Commissioner Prouty: You need not introduce any testimony on that, Mr. Cowan.

Mr. Dickinson: I merely desire to have the record show in this case an objection to the sufficiency and competency of the testimony offered.

Mr. Cowan: Do you mean the competency of the testimony to show that the commission company is the agent of the shipper for the sale of the cattle and the paying of the freight and collecting the overcharges?

Commissioner Prouty: *I understand the Commission must find that the owner of the cattle himself paid the freight, either himself or through some agent; and Mr. Dickinson objects that there is not sufficient proof as to that.*

Mr. Cowan: I do not understand Mr. Dickinson that way. I understood Mr. Dickinson to mean that there is no sufficient evidence to prove that the commission man is the agent to collect and pay back overcharges.

Mr. Dickinson: No, the Commissioner has my view."

If the Circuit Court of Appeals was right in holding that conceding there was sufficient proof of the assignments, the evidence showed that the purpose of the assignment was not such as to vest the legal title of the claims in petitioner so as to authorize the Commission to make the award of reparation to him, that fact would end the case no matter what may be the form of the judgment. That the court of Appeals was clearly in error on this question we will endeavor to show in our brief in support of this petition.

C.

The Honorable Circuit Court of Appeals has erroneously decided the case upon the record. The other questions sought to be reviewed will be discussed further in our brief—The decision of the Court of Appeals is in conflict with the decisions of this court and of other Circuit Courts of Appeals in *L. & N. R. R. Co.* v. *Finn*, 235, U. S. 606, and other cases cited at page 3, which will be discussed in our brief.

II.

The questions involved in this case are of great public importance.

There are a multitude of cases pending before the Commission and the courts involving claims for reparation arising from the exaction of unreasonable rates. The amount involved in this case is over $180,000 and other cases are pending awaiting the decision in this case. The volume of the cattle industry is immense. The interests of the owners and dealers in cattle are affected by the freight rates. It is highly important to shippers and carriers alike to have their rights defined by this court and to know what character of proof may be deemed sufficient before the Commission and whether their claims for reparation may be assigned and how and for what purpose.

If the proof already adduced before the Commission be sufficient then it would be a great wrong and a great burden to petitioner to require that he go to the expense and take the necessary time to make further proof of the ownership and the assignments in at least two thousand or more individual shipments. The spirit of the law does not contemplate such procedure. The giving to Boards of Trade, Commercial Bodies, Traffic or Commercial Associations, the right to make complaint before the Commission

in behalf of all shippers and the right of shippers to have the benefit of such proceeding by such bodies is evidence of the intention of Congress to liberalize the procedure. **But, if your petitioner should make such proof upon a new trial, he would be met by the holding of the Circuit Court of Appeals that the purpose of the assignments was such as would not authorize the Commission to make the award to him, and if that is the law, that ends the case, and the decision of the Court of Appeals is final.**

In this case your petitioner and his assignors have been in litigation over the rates and damages before the Commission and courts since 1905, a period of over twelve years and under the erroneous conclusions of the Court of Appeals will be required to go back to the District Court, and have that court commit error under the opinion of the Circuit Court of Appeals and then again come to the Circuit Court of Appeals, where that error would doubtless be affirmed, and then by writ of error, come to this court and if this learned court should then reverse the Circuit Court of Appeals, petitioner would be required to go back to the District Court and retry his case for the third time. Each individual claim is small in amount. The expense of such proceeding is almost prohibitive.

III.

Certiorari is a Proper Remedy.

Your petitioner further avers that the issue of a writ of certiorari is a proper writ under the circumstances and is authorized by Section 262 of the Judicial Code of the United States. It was done in a similar case—*Meeker* v. *Lehigh Valley Railroad Co.*, 234 U. S. 749-750; 236 U. S. 412; *Delk* v. *R. R.*, 220 U. S. 580. The Conqueror, 166 U. S. 114. The court may dispose of the entire case upon its merits, *Denver* v. *New York Trust Co.*, 229 U. S. 123. Although a writ of error has been sued out to the United States Circuit Court of Appeals and your petitioner believes that the case is properly in this court on writ of error, yet a doubt having arisen on that point, your petitioner in order that the case may be disposed of by this court in the event that it should be held that the writ of error was improperly granted and in the event that the writ of error should be dismissed, makes this application for the writ of certiorari.

Conclusion.

Your petitioner files herewith a certified copy of the record in this cause in the Circuit Court of Appeals and a certified copy of all proceedings in said court including the opinion of said court of October 26, 1917, and the modification thereof on March 12, 1918.

Wherefore your petitioner prays that a writ of certiorari may be issued out of and under the seal of this court directed to the United States Circuit Court of Appeals for the Eighth Circuit commanding the said court to certify and send to this court on a day certain to be therein designated a full and complete transcript of the record and all proceedings of said Circuit Court of Appeals in the said case therein entitled Atchison, Topeka and Santa Fe Ry. Co., plaintiff in error, v. E. B. Spiller, defendant in error, No. 4819, also in Nos. 4820, 4821, 4822, 4823, 4825, 4826, and 4827, all of which were heard and decided upon the record in No. 4819 (being the same case, but separate writs of error were sued out by each defendant) to the end that the said case may be reviewed and determined by this court as provided in Sec. 262 of the Judicial Code of the United States, or that your petitioner may have such other or further remedy or relief in the premises as to this court may seem appropriate and in conformity with law and that said judgment of said Circuit Court of Appeals in said case may be reversed by this Honorable Court and your petitioners will ever pray.

S. H. Cowan
B. F. Deatherage
Attorneys for Petitioner.

J. H. Burney
H. Cressen

State of Missouri, County of Jackson, ss.

B. F. Deatherage being duly sworn on his oath says that he is one of the counsel for petitioner in the above cause, that he prepared the foregoing petition and knows the contents thereof, and that the allegations therein are true as he verily believes.

B. F. Deatherage

Subscribed and sworn to before me this 4 day of June, 1918.

J. C. VanDeventer

In my opinion the foregoing petition is well founded in law.

B. F. Deatherage
Attorney for Petitioner.

IN THE

Supreme Court of the United States

E. B. SPILLER, PETITIONER,

VS.

ATCHISON, TOPEKA & SANTA FE RAILWAY CO., ET AL., RESPONDENTS.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

May it Please the Court:

We have attempted in the foregoing petition, in accordance with the rules of this court, to make a summary and brief statement of the matter involved and the general reasons relied on for allowance of the writ. The allowance of the writ of certiorari under Sec. 262 has been recently made in the similar case of *Meeker* v. *Lehigh Valley R. R. Co.*, 234 U. S. 749, 750, same case 236 U. S. 412. Also *Delk* v. *St. L. & San Francisco R. Co.*, 220 U. S. 580; *Hitchman Coal & Coke Co.* v. *Mitchell*, 38 Sup. Ct. Rep. Advanced Opinions, Jan. 1, 1918. The authorities cited by the court in the Meeker case and Sec. 262 of the Judicial Code leave no doubt as to the power of this court to grant such writ. While we believe the case is properly here on writ of error, yet there being some doubt on that question because of the want of finality in the form of the judgment of the Circuit Court of Appeals, we have made application for the writ of certiorari in order that the case may be finally disposed of. If the decision of the Circuit Court of Appeals is erroneous and this court reverses that decision, the litigation will end. In the Meeker case the form of the judgment of the Circuit Court of Appeals of the third circuit was the same as in this case, a reversal of the lower court and remand for new trial.

The amount involved in this case being over $180,000 of itself is of such importance as to justify the issue of the writ, and when other cases pending and awaiting the decision of this case are considered the amount involved and the importance of the case becomes greater.

II.

Granting of the writ of certiorari should not be denied because the Circuit Court of Appeals reversed and remanded the case for a new trial. That was done in the Meeker csae, and in the Delk case, *supra*, and in the case of *Flannelly* v. *Del. & Hud. Co.*, 225 U. S. 597, but writs of certiorari were granted in those cases, and it may be issued even before the appeal has been heard in the Circuit Court of Appeals.

The Three Friends, 166 U. S. 1, 5, 49.
Forsyth v. *Hammond*, 166 U. S. 506, 512.

To retry the case below in accordance with the opinion of the Court of Appeals will involve an immense amount of time, labor and expense. To make proof of ownership of each shipment of cattle by evidence other than that already offered may require the taking of testimony of more than two thousand individuals and to make proof of the assignments of each claim by the assignors will require an equal amount of labor, time and expense. Then after incurring all such expense and labor and time to make such proof we would be met with the holding of the Circuit Court of Appeals that although the assignments were proven "the purpose of the assignments was not such as to vest the legal title of the claims in Spiller so as to authorize the commission to make the award of damages to him." If the Court of Appeals is right on that point then it would be useless for your petitioner to take further testimony and make other proof. But if the Court of Appeals is wrong on that point and right on the need of further proof as to ownership and of the assignments, although we believe the decision was erroneous on all three questions—then your petitioner could but with great expense and labor, make the other proof, but if the Court of Appeals is right on that question, then the taking of further proof and incurring such great expense for all parties would be useless. It is to the interest of respondents, as well as of your petitioner, for this court to grant the writ of certiorari and have the questions involved decided by

this Honorable Court. No individual shipper nor assignee of a great many shippers can afford to litigate such questions indefinitely. By granting the writ of certiorari, "sure and speedy justice" can be rendered, otherwise the obstacles to a review of this case by this court would practically be insurmountable. The carriers have no real defence to these claims. They have had full opportunity to present any evidence they had and they presented none at all.

A.

There was sufficient proof of who owned the cattle and who paid the freight.

The Commission is an investigating body and not bound by the strict rules of evidence:

I. C. C. v. *Baird*, 194 U. S. 44.
I. C. C. v. *L. & N. R. R.*, 227 U. S. 93.
L. & N. R. R. v. *Finn*, 235 U. S. 601.
I. C. C. v. *C. R. I. & P.*, 218 U. S. 110.

Therefore, statements of counsel, hearsay evidence not objected to, proof of general course of business and custom, are admissible and should be considered. The record discloses an acquiescence on the part of respondents in the suggested abridgement of the formal proof. As stated by the learned District Judge Van Valkenburgh before whom the case was tried below:

> "Such things are common in courts of law in the interest of economy of time and labor, and still more so in more informal proceedings before commissions. It is true that at the end of the hearing the defendants interposed objections as to the sufficiency of the proof, but after such an attitude assumed in the course of the trial, courts generally would not entertain such an objection as reaching an offer of this kind proposed for convenience and acquiesced in by counsel at the earlier stage of the proceedings."
>
> "The Commissioner, himself a trained lawyer, after reviewing the record as made, was of opinion that the evidence sustained the finding he made; and after a very careful examination and that deliberate consideration, made necessary by the earnest insistence of counsel, I am constrained to agree with the Commissioner."
>
> "It was stated by counsel for plaintiffs in his opening, and his statements were confirmed by Mr. Williams, the assistant secretary of the Cattle Raisers' Association, that these statements of the shippers and real owners were pro-

cured and made up from the books and records of the commission men, at point of destination, to whom the shipments were made. These commission companies sell the cattle and make up an account of sales so-called, transmitting to the shipper, the owner, the proceeds, after deducting out of the proceeds the amount of freight, feed charges, and other charges of that character. These commission companies make their settlements with the real owners, or parties in interest, irrespective of the caretaker or other person in whose name the shipment may nominally be made; such are the ones whose names appear in the statements offered, and from whom the assignments were procured. These assignments, as shown by the sample, are absolute on their faces and import a valuable consideration. A careful reading of the record discloses that plaintiffs offered to prove this general situation by a witness, or witnesses, from among the commission men but the Commissioner, deeming the matter already to have been sufficiently shown, for the purposes of a *prima facie* case, declared further proof to be unnecessary. Nothing to the contrary was shown, nor offered to be shown, by the defense. On the contrary, the entire record discloses an acquiescence on the part of the defense upon this asserted course of business dealing, as well as, in some cases, statements amounting to admissions. The following, among others, will serve as an illustration:

"Mr. Cowan: Now, I ask the attorneys of the railroads, as they probably now know, whether it is the fact that in all cases the freight was paid by the commission company and deducted out of the account sales of the cattle, as I have stated. I presume all you gentlemen know that to be the case. Is that right, Mr. Wood?

Mr. Wood: I do not know anything about it, except what you say about it, Judge.

Mr. Cowan: I would like to call Mr. Moore, who has spent many years in the commission business. He has kept the books of this firm of Evans-Snider & Buel, and he has the books here, so as to explain for the purpose of the record and for the information of the Commission just what the course of proceeding is.

Mr. Norton: I think that was stated in the other hearing. I think our own live stock man stated that.

Mr. Cowan: I think he did.

Mr. Norton: We are anxious to get to another meeting, and you can put that in, if necessary, later."

It is true that there was much talk of having the books and bookkeepers of the various commission companies examined and reported on by an examiner to be appointed by the Commission. It

is true that the defendants insisted that this would be the best evidence, at least evidentiary in its character, but the Commissioner felt that upon the entire record the situation appeared in the absence of rebuttal, and so I think it did for the purposes of a hearing of this nature."

B.

The claims were assignable. The assignments were absolute in form and vested the legal title in the assignee.

Comegys v. *Vasse*, 1 Pet. 193.
Irwin v. *U. S.*, 97 U. S. 396.
Edmunds v. *Ill. Cent. R. R.*, 80 Fed. 78.
4 Cyc. pp. 23-26.
Davis v. *R. R.*, 25 Fed. 786.
5 Corpus Juris 593.
Rucker v. *Bolles*, 80 Fed. 1. c. 510.

The case of *Edmunds* v. *Ill. Central R. R. Co.*, 80 Fed. 1. c. 510, is directly in point and involved assignments of similar claims.

If a chose capable of assignment is assigned absolutely to one, but the assignment is made for the purpose of collection, the legal title thereto vests in the assignee, and it is no concern of the debtor, that the equitable title is in another. The assignee may prosecute an action in his own name.

5 Corpus Juris 958, 985, 994.
Dewer Eng. Works, 179 Fed. 922.
George v. *Tate*, 102 U. S. 564.

C.

The Circuit Court of Appeals erroneously held that in proceedings before the Commission the counsel for respondents were not bound by their apparent acquiescence in the procedure and their failure to object to the testimony as incompetent or hearsay as they would be in a court of law, but may take advantage of a general objection at the close of the hearing that the evidence is not sufficient to support the finding and upon trial in the District Court, then make their objections and have that court reject such testimony. Such ruling is contrary to all precedent and unfair to claimants and to the Commission, misleading and unjust.

D.

In holding that the question of the reasonableness of the rates is open for the jury or court to pass upon in an action or an order for reparation made by the Interstate Commerce Commission, after the Commission has found such rate to be unreasonable, the Circuit Court of Appeals decision is in conflict with the decisions of this court in

Texas & Poe R. Co. v. *Abilene Oil Co.*, 204 U. S. 426, 444.
I. C. C. v. *C. R. I. R. R.*, 218 U. S. 110.
I. C. C. v. *L. & N. R. R.*, 227 U. S. 88.
U. S. v. *L. & N. R. R.*, 235 U. S. 314, 320.
I. C. C. v. *Ill. Cent. R. R.*, 215 U. S. 452.
I. C. C. v. *Del. L. & W. R. R.*, 220 U. S. 235.

The fifth and sixth questions may be considered together. The decision of the Circuit Court of Appeals upon the two propositions is in conflict with the decisions in

Texas & Poe R. R. v. *Abilene Oil Co.*, 204 U. S. 426.
Southern Ry. Co. v. *Tift*, 206 U. S. 428.
Ill. Cent. R. R. v. *I. C. C.*, 206 U. S. 441.
Mills v. *Lehigh Valley R.*, 238 U. S. 473.
Mitchell Coal and Coke Co. v. *Penn. Ry. Co.*, 230 U. S. 247.

F.

In holding that the order of reparation made by the Commission is void for want of sufficient evidence to support it, in a suit to recover such reparation to which the Commission is not a party, the court attacked the validity of the Commission's order in a collateral proceeding. In all cases heretofore determined by the courts setting aside orders of the Commission, the Commission has been a party, so far as we have been able to learn. In *Eastern Tex. R. R. Co.* v. *Railroad Com. of Texas*, 242 Fed. 300-305, with reference to orders of the Commission it was held:

> "The validity thereof can only be attacked directly—it certainly cannot be attacked collaterally in any cases."

Orders of the Commission are final and not reviewable in any court on all questions of fact. Unless

1. Beyond the powers which it may constitutionally exercise.

2. Beyond its statutory powers.

3. Based upon a mistake of law.

4. When law and fact are intermixed. None of which conditions exist in this case. The findings of the Commission were based wholly upon facts and were within its constitutional and statutory powers and were not based upon a mistake of law, nor were facts and law intermixed.

Interstate Commerce Commission v. *Union Pacific R. R.*, 222 U. S. 541, 545.
Southern Pacific Co. v. *I. C. C.*, 219 U. S. 433.
I. C. C. v. *Ill. Cent. R. R.*, 215 U. S. 470.
I. C. C. v. *Northern Pac. R. R.*, 216 U. S. 544.
I. C. C. v. *Alabama & Midland R. Co.*, 168 U. S. 146.
I. C. C. v. *L. & N. R. R.*, 227 U. S. 88.

The findings of the Commission on questions of fact are conclusive except as pointed out in the above cases. *U. S.* v. *L. & N. R. R.*, 235 U. S. 320.

G.

See 16 A of the Act to Regulate Commerce provides for any party to apply for a rehearing "in any proceeding" before the Commission. Failure to do so should preclude a party from afterwards attacking the order of the Commission as unsupported by sufficient evidence. *St. L. & S. W. Ry. Co.* v. *Samuels & Company*, 211 Fed. 588, 593.

H.

In holding that the assignments were not proven, and if they were, that the purpose of the assignment was not such as to vest the legal title in Spiller so as to authorize the Commission to make the award to him, although no objection of any kind was made before the Commission to the sufficiency of the proof of the assignments, or to the form thereof, or that the legal title did not pass, or that the claims were not assignable, the Circuit Court of Appeals committed error. We have set forth fully the evidence as to the assignments, the remarks of counsel and of the Commissioner concerning the proof thereof and the acquiescence of counsel for respondents to the remark of the Commissioner when he stopped Mr. Cowan from going further

with the proof by saying, *"I don't think you need go into that; unless there is some objection we will find the fact of the assignment according to the language of the assignment in all cases where an assignment has been made, and you indicate in whose favor the order should be made in all cases."* No objection was made. Can counsel remain silent under such circumstances and afterwards in an Appellate Court make objection that the assignments were not proven? At the close of the hearing the objection by Mr. Dickinson of counsel for respondents was, "to the sufficiency and competency of the testimony offered," but he did not refer to the assignments but to the question of who paid the freight.

> *"Commissioner Prouty: I understand the Commission must find that the owner of the cattle himself paid the freight, either himself, or through some agent and Mr. Dickinson objects that there is not sufficient proof as to that.*
> Mr. Dickinson: The Commissioner has my view."

So the proof they claimed was insufficient was not as to the assignments, but as to the ownership, and as to the damages. After such an attitude, we submit counsel should not be allowed to raise such objections for the first time in the Appellate Court.

Much more might be said upon the questions involved but we are mindful of the rule of the court that applications of this nature and briefs in support, must be brief. If the writ of *certiorari* is granted the merits of the case will be fully briefed and argued in another brief.

Respectfully submitted,

S. H. Graves
B. F. Dillon
Attorneys for Petitioner.

H. Burney
J. Crenshaw
Of Counsel.

To Hon. Gardiner Lathrop, Robert Dunlap, T. J. Norton, Thomas R. Morrow, J. W. Jamison, C. S. Burg, R. V. Fletcher, and W. T. Dickinson, Counsel for Respondents:

You and each of you will take notice that on Monday, October 7, 1918, at 12 o'clock noon, or as soon thereafter as counsel can be heard, the foregoing Petition and Brief will be submitted to the Supreme Court in the Capital at Washington, D. C. for its consideration and action.

S. H. Beaver
B. F. Leather agt
Attorneys for Petitioner.

Service of a copy of the foregoing Petition Brief, and notice is hereby acknowledged this .... day of ....., 1918.

.....

.....
Attorneys for all Respondents.

JAN 13 1920
JAMES D. MAHER, CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 137.

E. B. SPILLER, PLAINTIFF IN ERROR,
vs.
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

No. 138.

E. B. SPILLER, PLAINTIFF IN ERROR,
vs.
CHICAGO AND EASTERN ILLINOIS RAILROAD COMPANY.

No. 139.

E. B. SPILLER, PLAINTIFF IN ERROR,
vs.
CHICAGO AND ALTON RAILROAD COMPANY.

No. 140.

E. B. SPILLER, PLAINTIFF IN ERROR,
vs.
THE MISSOURI PACIFIC RAILWAY COMPANY.

No. 141.

E. B. SPILLER, PLAINTIFF IN ERROR,
vs.
ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY.

No. 142.

E. B. SPILLER, PLAINTIFF IN ERROR,
vs.
ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY.

No. 143.

E. B. SPILLER, PLAINTIFF IN ERROR,
vs.
CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY.

No. 144.

E. B. SPILLER, PLAINTIFF IN ERROR,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY.

No. 145.

E. B. SPILLER, PLAINTIFF IN ERROR,
vs.
MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY.

N ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BUCKNER F. DEATHERAGE,
SAMUEL H. COWAN,
Attorneys for Plaintiff in Error.

REPLY BRIEF FOR PLAINTIFF IN ERROR

SUBJECT INDEX

	Page
Complainant did not decline to produce primary evidence	1
Proof custom of the commission companies to enter upon their books names of owners	7
Proof of shipment of cattle and payment of freight—complainant did not "rest" as stated by defendants	11
Objections by defendants	12
Objections by defendants were three in number; the first, before the evidence was finished; second, relating to the damage; third, relating to proof of custom	16
No objection before the Commission as to the assignments. Defendants estopped by their silence	17
Commission not limited to strict rules as to evidence	18
Not necessary to prove assignments were for value	20
Objection was as to competency and sufficiency of proof as to custom of commission companies	21
Commissioners view that payment of unreasonable freight charge imports damage only question to be passed on by Court	23
Conference rulings not followed and not binding and not applicable	24
Commissioner did not doubt value of complainants evidence	26
Objections mostly at first hearing and before checking and admissions by carriers	26

Page

The right to damages is not confined by statute to consignor or consignee but may be assigned. Cases cited by defendant analyzed 28

The statement in complainant's first brief at page 71 as to admissions and checks by debits of consignors is true and supported by the record ... 32

Commissioner had statements checked by examiner .. 40

Law of custom 40-41

Some exceptions as to rule of hearsay testimony 42

INDEX TO CASES

	Page
Bigelow on Estoppel (6th Ed.) 648	17
Beatty v. Gregory, 17 Iowa 109	41
Buck v. Grimshaw, 1 Edw. 140 (N. Y.)	41
Barrett v. Williams, 2 Fed. Cas. No. 1051, 4 McLean 589	41
16 Cyc. 759	17
16 Cyc. 1198	42
12 Cyc. 1030	40, 41
12 Cyc. 1033-1034, 1044	41
3 Ency. of Ev. 959	42
Edmunds v. Ill. Central R. R., 80 Fed. 78	30
Greenwich Ins. Co. v. Waternu, 54 Fed. 78	30
Given v. Times, etc., Printing Co., 114 Fed. 839	42
Grant v. Lexington, etc., Co., 5 Ind. 23	41
1 Greenleaf on Ev. (14 Ed.), Sec. 93	42
Hook v. Ayers, 80 Fed. 978	17
Howard v. Ins. Co., 109 Mass. 384	41
Hunter v. Locke, 5 Hill 437 (N. Y.)	41
Interstate Com. Act., Secs. 13 and 17	19
I. C. C. v. L. & N. R. R., 227 U. S. 93	19
Jones v. Haley, 128 Mass. 585	42
Jubitz v. S. P. Co., 27 I. C. C. 44	25
Philadelphia, etc., v. Dubois, 12 Wall. 47	17
Phillips v. Grand Trunk R. R., 236 U. S. 662	29
Parsons Case, 167 U. S. 447	29
Rindskoff v. Barrett, 14 Iowa 101	41
Robinson v. U. S., 13 Wall. 363	42

	Page
Sleight v. Hartshorne, 2 John 31	41
Sensenig v. Pennsylvania, etc., 78 Atl. 91	29
Southern Pacific Co. v. Darnell-Taenzer, 245 U. S. 531	23
San Pedro Lumber Co. v. Reynolds, 121 Cal. 74	42
State v. Brady, 100 Iowa 191	42
Toledo L. & M. I. Co. v. Sheares, 16 Ind. 52	41
Texas Pacific R. Co. v. Abilene Oil Co., 204 U. S. 426	30
U. S. v. L. & N. R. R., 235 U. S. 314	19, 20
Williams v Ins. Co., 50 Iowa 561	41
Wiser v. Larveer, 189 U. S. 260	17

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 137.

E. B. SPILLER, PLAINTIFF IN ERROR,
vs.
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

No. 138.

E. B. SPILLER, PLAINTIFF IN ERROR,
vs.
CHICAGO AND EASTERN ILLINOIS RAILROAD COMPANY.

No. 139.

E. B. SPILLER, PLAINTIFF IN ERROR,
vs.
CHICAGO AND ALTON RAILROAD COMPANY.

No. 140.

E. B. SPILLER, PLAINTIFF IN ERROR,
vs.
THE MISSOURI PACIFIC RAILWAY COMPANY.

No. 141.

E. B. SPILLER, PLAINTIFF IN ERROR,
vs.
ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY.

No. 142.

E. B. SPILLER, PLAINTIFF IN ERROR,
vs.
ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY.

No. 143.

E. B. SPILLER, PLAINTIFF IN ERROR,
vs.
CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY.

No. 144.

E. B. SPILLER, PLAINTIFF IN ERROR,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY.

No. 145.

E. B. SPILLER, PLAINTIFF IN ERROR,
vs.
MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

REPLY BRIEF OF PLAINTIFF IN ERROR

At pages 12 to 26 of the brief for defendant in error, counsel say, the books of the commission companies were the best evidence and were available, and that the com-

plainant proposed to introduce them or have them examined by an examiner appointed by the commission, and at page 16, counsel say, complainant "declined to produce such primary evidence."

It is true, the books of the commission companies were available; but it is not true that complainant declined to produce such primary evidence. On the contrary, complainant, at the second hearing did, at the request of the Commissioner made at the first hearing, have one of the bookkeepers and cashier of one of the commission companies before the Commission with the books of the Commission Company and offered to make the proof. The record shows what happened as follows: (p. 247)

> "Mr. Cowan: Now we have examined the commission companies' books again. We have also applied to the Stock Yards Company for information, meeting with the same refusal we have met with before. We are prepared to show now the books of the Evans-Snider-Buel Company, that being the company that does business at Kansas City, St. Louis, Ft. Worth, Chicago, and I think Omaha and St. Louis—all the markets—as being representative. We have a witness here, Mr. Moore, who has been engaged in the business many years, managing the accounting department of the Evans-Snider-Buel Company, and he has brought the books of original entry, as requested by your Honor, and is prepared to show that it shows the source of information to which an Examiner of the Commission could go to secure everything we propose to prove.
>
> Commissioner Prouty: Let us see in the first place just what has been done by the carriers. You say you have served since the original hearing, or before that time, or since our last hearing and before that time, to each delivering line a list of the shipments with respect to which you claim to recover damages?
>
> Mr. Cowan: All that had been made up at that

time, and these are odds and ends I have spoken of now.

Commissioner Prouty: Well, you have furnished them a list anyhow?

Mr. Cowan: Yes."

And again, at page 257:

"Mr. Cowan: I would like to call Mr. Moore, who has spent many years in the commission business. He has kept the books of this firm of Evans-Snider & Buel, and he has the books here so as to explain for the purpose of the record and for the information of the Commissioner just what the course of proceeding is.

Mr. Norton: I think that was stated in the other hearing. I think our own livestock man stated that.

Mr. Cowan: I think he did.

Mr. Norton: We are anxious to get to another meeting, and you can put that in, if necessary, later.

Commissioner Prouty: I think that is the ordinary course of business. I do not think the testimony of one commission merchant would show what the course of business necessarily was with another. In other words, I do not think by calling Mr. Moore, you would necessarily obviate the necessity of calling these other commission men who kept books on these transactions, because there is no way of showing to whom that money was paid except by the books of the commission men, and it seems to me, and you must have the original book in every case.

Mr. Cowan: If required to do it, we would have to do that, as a matter of law and evidence, but the reason I brought Mr. Moore, was the suggestion made by your Honor before, that before appointing an examiner to go into these books, the Commission would like to examine one set of books from some concern to see that we have the source of information to which the examiner can refer. Now, we have that here.

Commissioner Prouty: *That was upon the proposition that the carriers were not going to check these accounts at all.*

Mr. Cowan: I know that.

> Commissioner Prouty: They have now checked up, or Mr. Norton for his company, has checked up these accounts as far as he can. Now, if you find you cannot locate these thousand cars by the books of the railroads, and the stock yards, and that you have to rely upon some other evidence to show the fact of the shipment, and the payment of the money, then it may be necessary to hear these commission men, but I do not think you have reached that point."

The 1,000 cars referred to were not checked by the Santa Fe and not included in the order.

And again, at page 268:

> "Mr. Cowan: I presume that the proof that would be made by Mr. Moore, if he were placed upon the stand, is practically waived. We have the books here.
>
> Commissioner Prouty: We will see whether or not it is waived, but I do not understand they insist upon it now, or rather the suggestion is that the Examiner of the Commission may examine these books.
>
> Mr. Norton: He may be well able to do it then and report."

At page 19 of defendant in error's brief, referring to the books of Evans, Snider, Buel Company, the very books which complainant had in court, as shown above, they say:

> "But that complete primary evidence never was offered by counsel for the complainant, who refused to go to the trouble of producing it."

The statement of counsel is not borne out by the record.

At page 21 of brief for defendant in error, counsel say complainant declined to produce this primary evidence

because "*he didn't have to produce it.*" And they quote from page 237 of the record; but in order to understand the full meaning of that statement by Mr. Cowan, reference must be had to the entire record of the first and second days' hearing as shown from pages 201 to 244 of the record, by which it will conclusively appear that Mr. Cowan referred to the expense bills and to the car numbers. It was shown that the commission companies did not preserve and retain the expense bills. They never do. It was shown the commission companies' books did not show the car number (p. 207). The Commission had proposed to require the carriers to check the lists furnished by the complainant with the carriers' books, to ascertain whether the cars moved, and the freight was paid. The carriers wanted fuller information. They wanted the expense bills which would show the car numbers and which would enable them to check the shipments with greater ease, but the complainant could not furnish either expense bills or car numbers, because they were not available. The carriers, however, could and did check the shipments embraced within the order without the expense bills and without car numbers. Complainant at no time ever declined to produce all or any of the primary evidence available. It was expense bills and car numbers which complainants counsel referred to when he said he "did not have to produce it."

The production and examination of the commission companies' books was waived as to all the cars checked and embraced in the order. All of the statements about the books and having them examined was before the lists had been examined and checked by the carriers. That the examination and check by the carriers made an exam-

ination of the books unnecessary in the opinion of the Commissioner is shown by the following: (R. 258)

> "Mr. Cowan: If required to do it, we would have to do that, as a matter of law and evidence, but the reason I brought Mr. Moore, was the suggestion made by your Honor before, that before appointing an Examiner to go into these books, the Commissioner would like to examine one set of books from some concern to see that we have the source of information to which the examiner can refer. Now, we have that here.
>
> Commissioner Prouty: That was upon the proposition that the carriers were not going to check these accounts at all.
>
> Mr. Cowan: I know that.
>
> Commissioner Prouty: They have now checked up, or Mr. Norton for his company, has checked up these accounts as far as he can. Now, if you find you cannot locate these thousand cars by the books of the railroad, and the stock yards, and that you have to rely upon some other evidence to show the fact of the shipment, and the payment of the money, then it may be necessary to hear these commission men. But I do not think you have reached that point."

The commissioner referred to 1,000 cars not checked by the Santa Fe and not included in the order.

It should be remembered in considering this question that the information concerning the shipments had been furnished to the complainant by the commission companies *in writing* on blank forms furnished for that purpose. Those statements were filed with the Commission. Copies were made from them and tabulated by the Secretary. They showed what the books showed, namely full and complete information as to owner, dates, weights, amounts, etc. Copies of these statements were furnished to the railroads for checking. These statements

did not show the names of any of the caretakers, but of owners only. Neither the complainant nor any of the commission companies knew the names of caretakers. Therefore they could not furnish the names of caretakers, and all of those named as consignors in the lists submitted to and checked by the carriers were necessarily the owners, because the commission companies' books from which the information was derived showed only the names of the owners and not of the caretakers. This was stated by Mr. Cowan and sworn to by Mr. Williams from his personal knowledge, and also stated by Mr. Brooks, Santa Fe agent, and left no room for doubt on the proposition. When this list was furnished and checked by the carriers and the movement and payment admitted, what more was needed to show who were the owners? The custom and rule were shown.

II.

At p. 71 of defendants' brief, they quote from the record part of the testimony of the witness Williams for the purpose of showing that he only understood certain things, and they seemed to think because the witness referred to the information as "stuff" that his testimony is therefore incompetent.

But counsel seem to have studiously avoided referring to that part of the record where the witness stated positively (R. 216):

> "Mr. Cowan: Will you state for the purpose of the record as to whether what I said about it is correct history of the making up of these statements.
> Mr. Williams: It is, to my knowledge."

What Mr. Cowan had stated is shown in our first brief at pages 11, 12 and 13. Further, the witness stated that he had examined accounts of sales and also books of the commission companies and knew their custom and uniform course of dealing and how they kept their books and what the books showed. (R. 217, 218.)

Mr. Cowan made the same statement. Mr. Brooks, of the Santa Fe, made the statement that the books of the commission company showed the names of the owners. We furnished the statements in writing from the Commission Company, taken by them from their books, showing the names of the owners. These statements were checked and admitted. The Commissioner announced that he would find "on the facts admitted" that the owner paid the freight—that the owners were the persons shown from the lists taken from the books. That the carriers deemed proof of the custom of the commission companies to pay the freight, deduct it from proceeds of sale and account to the owner for the balance would be sufficient proof of ownership is shown by the character of the objection made by Mr. Dickinson near the close of the hearing, on which all of the carriers rely, and that objection was. (R. 299)

> "Mr. Dickinson: I would like to suggest that it may be true as far as my knowledge goes, that there is a universal custom of the commission houses to deduct freight charges from the invoice and remit the balance to the consignor, but I do not feel at liberty to admit the sufficiency or the competency of the proof that has so far been offered to sustain that proposition in this case.
>
> Mr. Cowan: How should I be able to prove it if it is a fact? Do you want somebody from a commission house that is thoroughly familiar with it?

Mr. Dickinson: Of course I am not making the proof. I do not think it would be right for me to sit here silently and by my silence admit that you have proved that fact, so far as you have proceeded in this case.

Mr. Cowan: If there is a question about that, I see Mr. Clifford Thorne, who is the chairman of the Iowa Commission here, and who I think is thoroughly familiar with live stock transactions in this country.

Commissioner Prouty: I do not believe, Mr. Cowan, that would be altobether competent proof. I rather think you have shown it already; but the testimony of one man in one section of the country that a certain thing was done in Iowa would hardly show that it was done in Texas.

Mr. Cowan: No, but I think Mr. Thorne is familiar with Chicago, St. Louis, Kansas City, St. Joseph and these other points.

Commissioner Prouty: My impression is that it appears the owner made a shipment of live stock to a commission merchant and the freight was paid and the cattle sold by the commission merchant. Did not one of these commission merchants appear here?

Mr. Williams: We brought one here but they would not let him go on the stand.

Commissioner Prouty: We will look over the record in that respect, but my impression is the Commission will find from the present record that the owner paid the freight. He sent the cattle to market, sent them to a commission man, and in the ordinary course of business he paid the freight.

Mr. Dickinson: That may be the usual custom, your Honor, I am not disputing it, but—

Commissioner Prouty: *You need not introduce any testimony on that, Mr. Cowan.*

Mr. Dickinson: I merely desire to have the records show in this case an objection to the sufficiency and competency of the testimony offered.

Mr. Cowan: Do you mean the competency of the testimony to show that the commission company is the agent of the shipper for the sale of the cattle and the paying of the freight and collecting the overcharges?

Commissioner Prouty: I understand the Com-

mission must find that the owner of the cattle himself paid the freight either himself or through some agent; and Mr. Dickinson objects that there is not sufficient proof as to that.

Mr. Cowan: I do not understand Mr. Dickinson that way. I understood Mr. Dickinson to mean that there is no sufficient evidence to prove that the commission man is the agent to collect and pay back overcharges.

Mr. Dickinson: No, the Commissioner has my view."

As shown above, the Commissioner thought that the custom had been proven, and the Commissioner was right. It had been stated many times by Mr. Cowan (R. 202, 208, 209), sworn to by the witness Williams, and (R. 216) admitted by Mr. Brooks (R. 215) and Mr. Norton of the Santa Fe. (R. 257.)

We have heretofore in our first brief quoted from the record showing the above, but this is what Mr. Norton said:

"Mr. Cowan: I would like to call Mr. Moore, who has spent many years in the commission business. He has kept the books of this firm of Evans, Snider & Buel, and he has the books here so as to explain the purpose of the record and for the information of the Commissioner just what the course of proceeding is.

Mr. Norton: I think that was stated in the other hearing. I think our own livestock man stated that.

Mr. Cowan: I think he did.

Mr. Norton: We are anxious to get to another meeting, and you can put that in, if necessary, later."

No objection to the character or competency of the proof had been offered before that time, and Mr. Dickinson showed that he at least recognized that his silence would be subject to the construction that he admitted the

sufficiency and competency of the proof. So he thought it proper to make the objection, but as has been shown, that objection was as to the competency and sufficiency of the proof of the custom of the commission houses—not that ownership of the cattle had not been proven. He practically conceded that if the custom had been proven it proved the ownership. The Commission remembered the custom had been proven and therefore overruled the objection.

III.

On page 42 of defendant's brief, counsel say:

> "Of course he never showed that anybody shipped cattle or paid freight. But he chose to rest."

That statement is not correct. Complainant did not rest. The shipments of the cattle and payment of the excessive freight on all the shipments covered by the order were admitted by the carriers. The statement about resting occurred on the second day of the first hearing (R. 239) before any lists had been checked by the carriers and while the manner of making the proof was under discussion between the Commissioner and counsel and grew out of the objection by the carriers to checking the lists and their desire to have the initials and number on each car. If complainant could prove the shipment and payment of the freight, it was not essential that he prove the car number. Counsel therefore said he did not have to produce evidence giving the car number. That evidence was with the stock yards companies and the carriers, not the commission companies. The car-

riers were insisting that complainant should get from the stock yards companies the car numbers and furnish that information to the carriers before the carriers should check the lists. Complainant said he did not "have to" procure that evidence. He had applied to the stock yards companies for the information, but had been refused.

IV.

At p. 30 of their brief, defendants' counsel say the carriers made frequent and specific objections to the insufficiency of the evidence, and motions to dismiss for failure of proof. An examination of the record will show the above statement is far from accurate. We have shown by reference to pages 299, 300 of the record, the objection made by Mr. Dickinson near the close of the hearing and that it referred only to the custom of the commission companies, as not having been proven.

At p. 225 of the record is shown the motion made by Mr. Norton of the Santa Fe, to dismiss the case for failure of proof. This was near the close of the hearing on the first day. The motion was made in response to a question by the Commissioner as to whether Mr. Norton was willing to accept the statements filed in lieu of the bookkeepers, and to accept the bookkeepers' in lieu of the books. Mr. Cowan had stated (R. 224) that he could be compelled to produce the books. "I do not see why the books themselves should be produced, but we have no objection to going to that trouble if it is necessary." But complainant did not rest there. Three hearings were had after that statement. The lists were com-

piled and furnished to the carriers who checked and admitted the shipments. So that the motion to dismiss for failure of proof at that stage of the proceeding is now without any force whatever. Nobody rested on the proof as it then stood. The situation then is shown at pages 238, 239 and 240, where Mr. Wood stated (238):

> "Now, whether the railroad companies could be required to do what they have ordinarily done in these reparation cases, that is, take the expense bills and without any further proof on the part of the complainant, check those up against their records and make their report, I don't know, but at any rate that has been the practice that has been pursued.
>
> And he then stated, if Mr. Cowan would give us the car numbers the carriers would check the shipments, "in the manner they are ordinarily checked," etc. "If he wants some short cut method of that sort he should arrange to see that what is ordinarily furnished, that is, the car numbers," etc. To which Mr. Cowan replied he did not have the car numbers and could not get them."

The result of the colloquy was that the carriers checked the shipments included in the order without the car numbers. After the checking had been done and the admissions were made the following occurred (R. 287):

> "Commissioner Prouty: Mr. Humburg?
>
> Mr. Humburg: This matter, if your Honor please, has been handled by Judge Fletcher, who is out of the city today, but in going through the files I find a letter addressed to Mr. Williams under date of January 23, 1913, saying the shipments have been checked *and found to be substantially correct.* That there are some minor irregularities in the names of consignors, but these are apparently only such errors as arise from frequent transcriptions of way bills.
>
> Commissioner Prouty: You are of the opinion then that the checking is sufficient to identify these cars as having moved?

Mr. Humburg: Our position upon that matter, if your Honor please, is that the statement we have submitted to Mr. Williams will speak for itself. Beyond that, we do not know what the situation is. That is to say, we do not know *of our own knowledge* who finally bore the charges; and we urge in substance the motion to dismiss filed with the Commission on the ground shown in that motion.

Commissioner Prouty: That, as I remember it, was because the claimants show no damage to them?

Mr. Humburg: Yes, and the several other grounds urged in that motion.

Commissioner Prouty: Is there a copy of that motion here? Mr. Cowan, have you a copy of that motion?

Mr. Cowan: I have never received a copy of that motion.

Commissioner Prouty: Have you a copy of the motion, Mr. Humburg?

Mr. Cowan: I think there was a verbal motion made in the record. I really did not pay any attention to it because I thought it was merely a formal motion.

Commissioner Prouty: It occurs to me I have never seen that motion.

Mr. Humburg: I find it in the files, your Honor, and I assume, of course, that it was filed.

Commissioner Prouty: I have no doubt that it was, Mr. Humburg."

The motion itself is not shown in this record, and what other grounds it showed are not disclosed. The foregoing comprise the whole of the objections made before the Commission, so that it is clear the only objection made was that damages had not been shown and that proof of the custom of the commission companies had not been made by competent and sufficient evidence. As to the damages, the admissions showed payment of the unreasonable rate and that of itself proved the damage and as to ownership of the shipments, the proof of the custom of

the commission companies to enter upon their books the names of the owners and the payment of the freight by the commission companies for and on account of the owners was proof of payment by the owners and who the owners were.

There was no objection before the Commission that the testimony was hearsay. That objection was not made until the case reached the District Court. Primary testimony of the bookkeeper and of the books was waived. There was, as the District Court said, an "acquiescence" in the course of procedure that misled the Commission and the complainant. All along, complainant's counsel conceded the books of the commission company should be produced and examined if required, and was willing and offered to do it, and did produce part of them, but having proved the custom and procedure of the commission companies and that they paid the freight for the owners, as shown by their books, it was not necessary to examine the books in view of the checking and admissions of the carriers.

What counsel for defendants says at pages 42, 43 and 44 about the presumption that may arise from non-production of the best or primary evidence is without force in view of the fact as shown by the record of complainant's willingness to produce the books, and of the actual production of some of them before the Commission and the waiver of their examination. What the Commissioner said about having them examined by an examiner was also deemed waived by the checking and admissions of the carriers.

V.

Under the heading "Objections of the carriers before the Commission and Court" at pages 44 to 65 counsel quote from the record as to their objections before the Commission, but it is seen that the greater part of it refers to the first hearing and relates to their demand that they be furnished the initials of and numbers on the cars before they should be required to check the list of shipments. There were no objections to the evidence offered, nor motions to dismiss, except in the instances shown by us in the preceding paragraph. Those objections and motions we have analyzed and shown the first was made before the hearing had hardly begun, the second on the ground that complainant had not shown damage, the third on the ground that the proof was not competent or sufficient to show the custom of the commission companies, and therefore the names of the owners. Instead of: "Those objections were strung through the record from the beginning to the end," as stated by counsel at p. 55 of defendants' brief, they nowhere appear in the record except as stated and shown above. It is true, Mr. Andrews, for the Santa Fe, stated, they did "not admit that claimants paid the freight," but no motion was made by him to dismiss for failure of proof after having made the admissions. The only motion made was by Mr. Humburg of the Illinois Central, and assuming it was made in behalf of all the defendants, it was made on the ground that damages were not shown. The names of the owners and the payment of freight by them was proven by the lists furnished by the commission companies, the statement of complainant's counsel, the testi-

mony of Williams, the statement by Mr. Brooks and by Mr. Norton, of the Santa Fe, as heretofore shown.

VI.

With reference to the assignments, we beg to again repeat what we said in our first brief, that no objection of any kind was made before the Commission as to them or the proof thereof. When the Commissioner announced: "Unless there is some objection, we will find the fact of the assignment," etc., and asked if there was anything more to be said about the case, Mr. Dickinson made his objection about the universal custom of the commission companies, but not a word about the assignments. There could not be a plainer case of estoppel.

> "When the silence is of such a character and under such circumstances that it would become a fraud upon the other party to permit the party who has kept silent to deny what his silence has induced the other to believe and act upon it will operate as an estopel.
>
> 16 Cyc. 759 and cases cited from 31 States and including
>
> Wiser v. Lawler, 189 U. S. 260, Philadelphia, etc., v. Dubois 12 Wall, 47.
>
> Given v. Times, etc., Printing Co., 114 Fed. 92.
>
> Hook v. Ayers, 80 Fed. 978.
>
> Bigelow on Estoppel (6th Ed.) 648.

Counsel say there was no proof of the authority of Mr. Lickterwood to sign the name of Mrs. Adair. Mr. Williams testified he knew Mr. Lickterwood's signature, and that he had sent the assignment "to be signed by the person in authority." Counsel say at p. 58, that the

remaining assignments were never put in evidence. That is not correct. At p. 297 of the record Mr. Cowan said: "These assignments have not been filed with the Commission, but we will file them."

We have set forth in our first brief, at pages 30 to 47, the entire evidence about the assignments. It shows counsel had the assignments present in court, ready to be proven and that they were filed. Counsel, at p. 58, say: "Suppose that no carrier had been present to object, could the Commission have made an award of $147,851, on assignments never executed by the owners of the cattle?" But the carriers were present. Of course if they had not been present they would not have been bound and estopped by their non-objection, but their presence and non-objection should and does estop them from now asking for formal proof.

VII.

Under the sub-title, "Objections before trial court," at page 65 et seq of defendant's brief, they take the position, as we understand, that all or any objections to testimony before the Commission that could or should be made in the trial of a case in a court of law may be made in the trial de novo in the District Court and should be ruled by that court according to the strict rules of evidence; and if incompetent in a court of law, should be rejected. We do not believe that is the law. If it be, then no claimant before the Commission can rely upon the liberality of the practice, but must be very particular in making his proof, even though it be without objection by the opposing side, because it may all be rejected by the District

Court. That rule would make the Commission a mere examining body for the purpose of taking testimony and reporting to a court without power of passing on questions of the legality of the testimony and would make its findings and order of no value.

Sec. 13 of the Interstate Commerce Act empowers "the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper." And Sec. 17 provides: "That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice," and this court in I. C. C. v. L. & N. R. R., 227 U. S. 93, said: "It is not limited to the strict rules as to the admissibility of evidence which prevails in suits between private parties," and yet according to counsel for defendants, at p. 68, the proceedings before the Commission would be "subject to all the rules of evidence, and the rules of evidence would be subject to all the ordinary tests employed in a court of record."

If that be so, then sections 13 and 17 amount to nothing and claimants would be "limited to the strict rules as to the admissibility of evidence which prevails in suits between private parties."

The findings of the Commission on all questions of fact, if based upon evidence, are conclusive. U. S. v. N. & L. R. R., 235 U. S. 314, 320. "And the amendments by which it came to pass that the findings of the Commission were made not merely prima facie, but conclusively correct in case of judicial review, except to the extent pointed out in the Illinois Central and other cases, supra, show the progressive evolution of the legislative purpose and the inevitable conflict which exists between giving

that purpose effect and upholding the view of the statute taken by the court below." U. S. v. N. & L. R. R., supra.

If there was any evidence, no matter how slight, to support the order, the question of fact so found by the Commission is concluded and not subject to judicial review. Was it not proven that the names of the owners were furnished by the commission companies who kept the record in tneir books? Their original slips containing such information were furnished to complainant and filed with the Commission. Their custom was proven positively by witnesses who had personal knowledge. Was not that sufficient for a prima facie case? There was nothing to hinder the defendants from introducing testimony to prove the findings were not true or that the names given as the shippers and claimants were not in fact the shippers and did not pay the freight. But they did not do so.

VIII.

As to the power of the Commission to make an award in favor of an assignee, counsel for defendants and the Court of Appeals (p. 89 of defendants' brief) seem to be of the opinion that the legal title did not pass to Spiller because it was not shown that he paid value for the assignments.

We submit that it was not necessary to prove a valuable consideration for an assignment in order to vest the legal title in an assignee. The assignments were absolutely in form, and vested the legal title in the assignee. This is shown by the authorities cited at pages 90 and 91 of our first brief in this court. Even if the assignments

were for the purpose of collection only or of prosecuting the suit, the same rule applies. What difference does it make what counsel thought about it at the beginning of the proceeding? If he was wrong in thinking he had the right to take the order in the name of the Cattle Raisers Association or in the name of the original shippers, after an assignment had been made, didn't he have the right to change his mind and get right? And as the original shippers had made the assignments, wasn't it necessary to take the order in the name of the assignee? What right had the owners to take the order after making the assignments? Did the assignments destroy anybody's and everybody's right to recover?

Counsel for defendants have not cited any authorities countervailing the authorities cited by us in our first brief, on this point.

IX.

At page 60 of Defendant's Brief they quote the language of the Commissioner to the effect: "I understand the Commission must find that the owner of the cattle himself paid the freight either himself or through some agent; and Mr. Dickinson objects that there is not sufficient proof as to that." But by reference to page 299 of the record it will be seen that the objection of Mr. Dickinson which was under discussion was as to proof of the custom of the Commission houses "to deduct freight charges from the invoice and remit the balance to the consignor, but I do not feel at liberty to admit the sufficiency or the competency of the proof that has

so far been offered to sustain *that proposition* in this case." What proposition was referred to? Clearly the custom of the commission houses. That the Commissioner so understood is shown by what immediately followed (R 299).

Commissioner Prouty: My impression is that it appears the owner made a shipment of live stock to a commission merchant and the freight was paid and the cattle sold by the commission merchant. Did not one of these commission merchants appear here?

Mr. Williams: We brought one here but they would not let him go on the stand.

Commissioner Prouty: We will look over the record in that respect, but my impression is the Commission will find from the present record that the owner paid the freight. He sent the cattle to market, sent them to a commission man, and in the ordinary course of business he paid the freight.

Mr. Dickinson: That may be the usual custom, your Honor, I am not disputing it, but—

Commissioner Prouty: You need not introduce any testimony on that, Mr. Cowan.

Thus we see the objection of the carriers was as to the custom and that was directly answered by the commissioner and by the record. Not only was the custom shown as to how the freight was paid and charged to the owners, but it was also shown by positive statements duly sworn to that the commission companies always entered on their books the names of the owners of the shipments and not the names of caretakers, therefore the names of the owners of each shipment was shown, and not the names of the caretakers.

X.

At page 64 of Defendant's Brief they quote from page 290 of the record to the effect that Commissioner Prouty stated: "These railroads have not admitted you are entitled to any money. They have admitted the movement of certain cars, and they earnestly insist you are not entitled to recover, but I think the commission would find on the facts admitted that you have paid the freight and are entitled to reparation. We hold that the payment of an unreasonable charge imports damage, that of itself shows damage. Now the railroads claim to the contrary *and are going to try that question.*" Counsel for defendants say the foregoing show they were alert with objections and admitted nothing except movement of certain cars. We submit the foregoing language from the Commissioner shows that the Commissioner understood from the admission made that the question left open to be determined was the *measure* and *proof of damages* and nothing else. We have never contended that the carriers admitted the shippers were entitled to recover the damages. That question was open, but it has been definitely settled by this court in the Darnall-Taenzer case, 245 U. S. 531.

At page 65 of Defendant's Brief they quote from the opinion of the Court of Appeals: "There was no proof that the consignors mentioned in the tabulated statement, now called Appendix 'A,' were the owners of the cattle, and it appeared beyond dispute by the testimony of the only witness sworn, that the cattle were not in all cases shipped in the name of the owner, but in the name of the caretaker. The extent to which the admissions of

the carriers carried the case is not disputed." That statement is shown not to be correct by the proof of the custom of the Commission houses to enter upon their books only the names of the owners of the several shipments, and not the names of caretakers, and that the commission houses did not know the names of the caretakers at all, that the commission houses furnished in writing to the complainants the names of the persons entered upon their books as the owners of the shipments of which all detailed information was given, except car numbers and names of the caretakers, and proof of that custom being universal. We earnestly insist proof by each individual shipper that he was such owner was not necessary. His ownership could be and was proven by proof of such custom and of the statements in writing furnished by such commission houses which statements were filed with the Commission. The lists submitted to and checked by the carriers did not contain the names of caretakers, not one. Only the names of the owners were shown on those lists because the commission houses' books did not show names of caretakers. The checking by the carriers of the names of consignors and consignees done by most of the carriers and their admissions and all the circumstances surrounding the parties and shown in evidence were ample proof from which the truth as to the owners could be inferred with certainty.

XI.

At page 73 and 74, Defendant's Counsel refer to conference rulings of the Commission to the effect that it would recognize assignments only from a consignor to

a consignee or vice versa and would not allow reparation to a stranger to the transportation record. We beg to urge that the claims being property founded upon property rights, and for that reason assignable, should not be denied upon the ground that the Commission in a conference ruling had concluded to not recognize assignments of claims for reparation. If it were necessary we would question the legality of such ruling. If a shipper should die after having been damaged by an unjust rate, and his executor or administrator filed or prosecuted his claim for reparation before the Commission, under the conference ruling referred to, he would be not allowed to recover. Yet the rule is that such claims survive the death of a shipper and if they survived, an executor or administrator can recover, and, if the damage is to a property right and survives, the right is assignable. The Commission, of course, has no power to deprive a claimant of his legal rights by a conference ruling. If under the statute an assignee has the right to prosecute a claim, the Commission has no power to deprive him of that legal right. But it is not necessary to question the legality of the conference ruling, because in this case it was not followed, nor was it followed in Jubitz vs. S. P. R. Co., 27 I. C. C. 44, which was submitted November 27, 1912, and decided May 5, 1913, nearly one year after the adoption of the so-called conference ruling. The conference ruling referred to states, "it will not recognize an assignment *by* a stranger to the transportation record." If the word "to" had been used instead of "by", it would have been more in line with the argument of the carriers.

There have been no assignments in this case *by* a stranger to the record. But if the word "to" is substituted for the word "by" still the ruling could have no force as to the present case, because it has not been followed in this case nor in others, and in our opinion such ruling, if followed, would be illegal, if it deprived a bona fide assignee, upon proper proof of his claim, from recovering.

XII.

At page 76 of defendants brief under the title "Commissioner doubted value of Spiller's evidence," counsel say— "Having shown that the best evidence was available to complainant, that it not only did not take the trouble to produce it, but *also declined to do so.*"

We beg to again deny that statement. We have heretofore shown that complainant all through the record offered to produce the books of the commission companies, the primary evidence, and did produce some of them, that complainant did not decline to produce anything, but said he did not have to produce expense bills and car numbers, because he did not have them and never did and they were not available, nor were they necessary.

XIII.

At pages 77, 78 and 79, Counsel quote from the record at the first hearing, but the record shows that all occurred before submission of the lists to the carriers and checking by them. Complainant at that time did not claim his

proof was sufficient, but that it should be supplemented by the books of the commission companies unless checked by the defendants.

After the checking by the carriers of the lists submitted and of their admission that the cars moved and freight was paid and proof of the custom of the commission houses and the manner of doing business, how it was universally carried on, and the freight paid, the Commissioner deemed it unnecessary to examine the books (R 258-259) that proof of ownership was proven by the custom and written statements made by the commission companies leaving only the measure and proof of damages to be proven.

Counsel refer to the record as confused and confusing. Counsel no doubt seek to make it so by endeavoring thus to have the case determined by inadvertent remarks made at the first hearing without considering the ultimate proof and reasons for the conclusion finally reached (pages 83 to 90, Defendant's Brief), thus they think because complainant first suggested the order be made in the name of the cattle raisers' association for the benefit of the shippers and owners, and next in the names of the owners, but finally in the name of the assignee that complainant should not recover. This, too, in a case where the hearing extended over a period of one year. We do not believe this court can be misled by such misleading statements.

At page 82 the defendants brief the quotation clearly refers to the question of assignments, that is, whether the order should be to the original owner or to the assignee. Where there were no assignments the order was to the original owner. Where there were assign-

ments the order was to the assignee. The Commissioner himself had previously asked Mr. Cowan if an owner could take an order for reparation after he had assigned the claim, and counsel said no. (R 297.)

"Commissioner Prouty: What do you say, Mr. Cowan, as to the right of the owner to ask for an order after having made this assignment?

Mr. Cowan: I do not think the owner has the right, after having made the assignment, to ask for an order. After having made the assignment, I think the assignee has the right."

What difference does it make whether the assignments were for value or not, or whether the legal title was held for the use and benefit of the original owner? The assignment being absolute in form passed the title. (See authorities cited in our original brief in this court, pages 90 to 96.) The opinion of the Court of Appeals on this question is clearly wrong and opposed to practically all authorities on the point. Neither the Court of Appeals nor Counsel for defendants cite any authorities in support of the proposition that the title did not pass.

XIV.

There is absolutely nothing in the words of the statute showing that it was the intention of Congress to confine the redress for damages to the consignor or consignee. The cases cited by counsel were governed by statutes which expressly declared "only the consignee or his heirs or assigns" could recover as in Weber v. Chicago, etc. (69 K 61), or were cases where a penalty was sought to

be recovered or were for injuries to the person as in the Employers Liability Act. But none of them refer to property damage. The damages to be recovered under the Interstate Commerce Act here involved are not to the person nor are they imposed as a penalty, but are damages to the property of the shipper, because the shipper was forced to pay out of his pocket more than he should have paid and his estate thereby depleted.

We submit that the case of Phillips v. Grand Trunk Ry. Co., 236 U. S. 662, and the case of Darnall-Taenzer Lumber Co. vs. Southern Pacific et al, 245 U. S. 531, are not in point on the proposition of the right of a shipper to assign his claim and the right of the assignee to recover. The question was not considered in those cases at all. The case of Sensenig v. Pennsylvania, etc., 78 Atl. 91, did not involve the Interstate Commerce Act, but a local statute, which called for treble damages and thereby imposed a penalty, and is therefore not in point. It denied the right to recover single damages because the case was based on the Statute calling for a penalty in treble damages.

The Parsons case, 167 U. S. 447, did not turn on the rights of an assignee, but upon the point that nobody was entitled to recover. Nor is the Abilene Oil Case, 204 U. S. 426, in point. It does not say whether the individual claimant may be an assignee. That point was not discussed at all.

At page 104 of defendant's brief counsel say, "the commission was without power to hear Spiller and pass upon his claim," and this because the Commission is not a court. Without repeating what we have heretofore shown in our original brief in this Court at page 101

to the effect that "the findings of the commission on questions of fact are conclusive except as pointed out in the above cases." I. C. C. v. L. & N. R. R., 235 U. S. 320, we beg to suggest that in finding that the claims were assigned, the Commission was passing upon a question of fact, just as much so as it did in finding the amount of damages was measured by the difference in the rate paid and the rate found reasonable. The Commission found the facts and based its order upon the facts so found. If as a matter of law to be determined by this Court the claims are assignable then the commission had the power to so find and make the order accordingly.

At page 128 of defendant's brief, Counsel in commenting on Edmunds v. Ill. Central, 80 Fed. 78, say that since the decision in Texas, etc., v. Abilene, etc., 204 U. S. 426, that the Edmunds Case would today "be dismissed without trial." If that be so, it would be because the Court was called upon to pass upon the reasonableness or unreasonableness of the rates involved, not because the action was prosecuted by an assignee. The Edmunds case is directly in point on the question of the assignability of claims under the Interstate Commerce Act, and we repeat there is nothing in the Abilene Oil case to the contrary.

At page 93 of the defendant's brief they say: "Congress did not intend to provide a remedy to one who might simply speculate in the alleged injuries of others. Barratry and maintenance are not favorites of the law." By which counsel evidently intend to insinuate that complainant is guilty of barratry and maintenance and speculation in the claims. There is not a word or line in the record upon which such innuendo can be based. Nor was

such question pleaded or ever suggested before the Commission or in the District Court. The assignments were made as a matter of convenience for the Cattle Raisers Association who conducted the proceedings as to the rate question before the Commission for the benefit of its members and others. The Interstate Commerce Act expressly authorizes boards of trade, commercial bodies and like associations to do so.

It contemplates unity of action. But even if the assignments were for speculative purposes, there is no warrant for saying the Congress did not contemplate assignments. If Congress had intended to limit the right to recover to the person who made the shipment it would have done so; there was no difficulty in finding words of limitation, as in the Employers Liability Act, and in patent cases and other similar acts. But the act taken as a whole evidently intended to leave the act so that many persons could combine and join in seeking redress or assign to others. Of course, a stranger who was not an assignee of the shipper or an heir or legal representative, and was not a party either as consignor or consignee was not embraced within its terms, but there is nothing to show that Congress intended to deprive a man's heirs, legal representatives or assigns from recovering the rights to which the shipper would be entitled. Why should there be? Why would Congress desire to so limit the right? No good reason can be given. If the railroads have acquired from a shipper illegal gains or damaged his property why should Congress say in case of his death, his heirs, legal representatives or assigns could not recover? Congress evidently did not intend to say so and did not say so. Such a limitation would be

monstrous. It might with as much reason say if the carriers killed a steer by negligence that only the then owner could recover its value and if he died before recovery the claim and right died with him. The proposition seems absurd.

XV.

At page 111 of defendants brief they quote from page 71 of our brief and say, "Not a statement in the foregoing quotation is upheld by the record." We have cited the pages of the record where may be found confirmation of our statement. By reference thereto the Court can determine whether we are right or not.

At page 285 of the record, the Commissioner speaking to Mr. Burg, Attorney for the M. K. & T. said. "Commissioner Prouty: Did you check the name of the consignor and the consignee on the way bill?

Mr. Burg: Yes, sir; and I think that *in almost every instance they tallied.* Of course, the billing shows the names."

At page 286 the Commissioner speaking to Mr. Williams, the witness, about the C. & A. and the letter received from it said. "Commissioner Prouty: Just let me see the letter. The statement furnished you by the Chicago and Alton shows the date of the shipment, the way bill number, the car number, the destination, the weight, the rate, and the freight paid. Now does it show the shipper and the consignee?

Mr. Williams: The consignor was J. E. Corn, Benbrook, Texas, consigned to Chicago, and it shows the consignee.

Commissioner Prouty: *So they also show the shipper and the consignee?*

Mr. Williams: Yes, sir."

The next road referred to was the Chicago & Eastern Illinois.

"Commissioner Prouty: Have you passed a statement to them and received it back from them?

Mr. Williams: I will take that back. Here it is. Their checking is shown there, furnishing the same information as shown by hte other road, way bill references, car numbers, and so forth.

Commissioner Prouty: *So this shows the consignor, the consignee,* the originating road, points of origin and destination, the date of the delivery, the numbers of the cars and rate paid.

Mr. Williams: Yes, sir. They have made one change there. Tuttle, Oklahoma, was the shipping point, and they have changed it to Tuttle, Texas. There is no Tuttle, Texas, on their railroad, and my statement was correct.

Commissioner Prouty: You received back from the Chicago & Eastern Illinois the papers which you present, containing these figures and the checking shown here?

Mr. Williams: Yes, sir.

The next was the Illinois Central (R 287).

Mr. Humburg: This matter, if your honor please, has been handled by Judge Fletcher, who is out of the city today. But in going through the files I find a letter addressed to Mr. Williams under date of January 23, 1913, saying the shipments have been checked *and found to be substantially correct.* That there are some minor irregularities in the names of Consignors, but these are appar-

ently only such errors as arise from frequent transcription of way bills.

Commissioner Prouty: You are of opinion then that the checking is sufficient to identify these cars as having moved?

Mr. Humburg: Our position upon that matter is that the statement we have submitted to Mr. Williams will speak for itself. Beyond that we do not know what the situation is. That is to say we do not know *of our own knowledge* who finally bore the charges, and we urge in substance the motion to dismiss filed with the Commission on the ground shown in that motion.

Commissioner Prouty: *That as I remember it was because the claimants show no damages to them.*

Mr. Humburg: Yes, and the several other grounds urged in that motion." On the following page (288) it was shown neither the Commissioner nor Mr. Cowan, Spillers Counsel, had ever seen the motion. It is not a part of the record in this case and was never introduced. What the other grounds were contained in it is left to conjecture. The Rock Island, the Mo. Pac. and the St. L., I. M. & S. were interrogated as follows (R 282 and 283):

Commissioner Prouty: We will pass on to some other company.

Mr. Williams: The Rock Island Railroad instead of furnishing it, they sent a list saying that these claims had not been located. By that I naturally presumed that the others were correct, or some reference would have been made to them. Here is a letter from Mr. Dickinson, saying "In response to your letter I am sending herewith"—

Commissioner Prouty: Just a moment, Mr. Dickinson, do you understand that all those cars in the list sent you, excepting those specified, were found and found to be correct?

Mr. Dickinson: In most of the cases, yes, sir; and substantially correct. They did not check in all the details.

Commissioner Prouty: You were satisfied they were the cars?

Mr. Dickinson: Our auditor was satisfied that they must be the same cars as submitted in the list by the complainant. Now, as to those which we could not locate, I had the auditor compile a list, and I furnished the gentlemen here with that list.

Commissioner Prouty: Then it would be correct if we took the entire list served on you and subtracted from it the list furnished Mr. Williams, and treat the balance as located and as correct?

Mr. Dickinson: I so understand it, Mr. Commissioner, with the exception that our records, and of course we are limited to those, do not in all cases check precisely with the statement submitted by the complainant. For example, the list submitted to us may indicate consignee L. or K. That I understand is the designation for some commission house at point of destination. While the list may show L, perhaps our records show some other letter. But, nevertheless, we thought that must be the same car referred to in the statement.

Commissioner Prouty: Now, have you any objection to the issuing of an order against your company for the cars which have been checked, leaving in abeyance those cars which had not been checked and concerning

which perhaps proof can be made and perhaps can not?

Mr. Dickinson: The question is as to the separation of the order?

Commissioner Prouty: Yes.

Mr. Dickinson: Well, if an order is to be issued, I do not know as that is material, whether it is made in two parts or one part.

Commissioner Prouty: You may proceed now to some other company, Mr. Williams.

Mr. Williams: I have here the St. L., I. M. & S., and the Missouri Pacific. They do not give the car numbers or way bill references, but on each claim they give the total weight and freight charges collected, and also in that way it is easy to determine just what the overcharge is.

Commissioner Prouty: Is the Missouri Pacific represented?

Mr. Wright: Yes.

Commissioner Prouty: Mr. Wright, do you understand that Mr. Williams' statement is correct, and that your company has located these cars?

Mr. Wright: I think it is substantially correct. As I recall it on the first lot furnished we found all but six cars. That is, we found them in this way: certain cars had moved from the points of origin to the points of destination shown, and our auditor believed that those were the cars set out in this claim, although he was not positive in every case.

As to the second lot, I do not recall just how that did come out, but the third lot, I have here with me, which has not been returned to Mr. Williams yet. It covers fours cars. There is a mistake in this. The

amount is a small one. $26.40, but it is $8.40 more than is charged on the cars. Mr. Williams can see that. He has the wrong weight for fare charged on the shipment.

Mr. Cowan: May that be filed?

Mr. Wright: Here is an explanation of it, showing just what the trouble was.

Mr. Cowan: That can be filed with the statement.

Commissioner Prouty: Mr. Wright, Mr. Cowan moves that the Commission enter an order with respect to the claims verified by your company. Supposing the Commission finds that it should enter an order, do you have any objection to their entering the order piecemeal, so to speak?

Mr. Wright: I cannot see any material objection to that, Mr. Commissioner.

We submit the above substantiates our statement made on page 71 of our first brief and shows we have not misstated the facts in the record.

We conceded the Frisco did not admit checking the names of the consignor, but in support of what we did say, we quote from page 262 of the record.

Mr. Wood (Attorney for the Frisco): My opinion would be this, that if as your honor suggests, *the books did show that beyond doubt, that the settlement of this identical car was made to the party named as claimant, of course that would be proof of that fact*, but its legal effect might be another matter."

At pages 264, 265 of the record Mr. Fletcher of the Illinois Central, at the second hearing on January 24, 1913, after having submitted his list as checked and which was long before the statements made by Mr. Humburg as shown at Page 287, said:

"Commissioner Prouty: Well, the name of the claimant has in all cases been taken from the books of the commission man, as I understand Mr. Cowan.

Mr. Cowan: In all cases except the few instances like he mentioned, like Morris & Company and Swift & Company.

Commissioner Prouty: The name of the claimant shows the person to whom the payment was made by the commission merchant; that is to say the owner of the cattle. Now, it appears, in some cases, for matters of convenience, the owner was not also the consignor, but it would occur to me that the claimant is probably correctly represented, although the consignor might not be.

Mr. Fletcher: *I wondered if there was any objection to our withholding the filing of that list until we could have that particular fact checked by the auditing department, as to whether the consignor named there is the consignor named in the billing, or whether they just took it for granted that he was.*

Commissioner Prouty: *I suppose there is no objection to that.*

Mr. Fletcher: They can be filed now if it is necessary, but I would like to have that fact ascertained by our line.

Commissioner Prouty: But that should be done right away.

Mr. Fletcher: Yes.

Commissioner Prouty: I suppose you have those way bills separated from the others in some file, so you can complete the check in a short time?

Mr. Fletcher: Yes."

This shows that the Ill. Central took the list for the

very purpose of checking the names given by the complainant as owner and consignor and the names of the consignor as shown by the railroad's books, and presumably that was done. At the next meeting it appeared from Mr. Humburg's statemena that Judge Fletcher had written a letter saying "the shipments have been checked and found substantially correct."

At page 269 of the record, and at the second hearing and following the above statements by Mr. Fletcher, Mr. Norton of the Santa Fe, said: "Mr. Norton: While he is looking for those I would like to get the same favor that Judge Fletcher asked for. I was talking with the auditing department and they neglected to take off certain facts and data, the number of the billing and so forth, and I would like to take this long enough to have that done."

Commissioner Prouty: Counsel may in all cases withdraw those checking sheets or checked sheets. How long will it take to do that?

Mr. Norton: I was going after the same information that Mr. Cowan wanted. Probably several days.

Commissioner Prouty: Would ten days be enough?

Mr. Norton: Oh, yes.

Commissioner Prouty: Within ten days then you are to send those documents to Mr. Williams at Ft. Worth. Any other carrier who desires may withdraw this list for the purpose of further examination?"

Now, what was the favor Judge Fletcher asked? It was to withdraw the list to check the names of the consignors as given in the lists and as given on the carriers books, and Mr. Norton asked for the same favor that Judge Fletcher asked for. Therefore we say the Santa

Fe having withdrawn the lists for that purpose and having afterwards returned them without showing that the consignors on their books were different from the names of the claimants should not now be heard to say that there was no showing that the consignors and the claimants were the same. This is important in connection with the fact that the lists furnished purported to give the names of the owners and not of caretakers—as the consignors.

XVI.

At the last hearing before the Commissioner, he made the following statement about his examiner. R. 292.

"Commissioner Prouty: I might say that if Mr. Williams can attend to this, I will ask our examiner to sit down with him immediately, just as soon as he comes to Washington and go through these checks of the railroads and see what are admitted, so we can make up a statement based on that admission. If within the next few days you can file with the commission and serve on the defendants a statement of what you ask to have found, that might be of service to us in rendering our findings, leaving out the exact figures a statement of facts." The findings of the Commission shows it did not include in its order any shipments not checked by the carriers and the movement and payment of the freight admitted by them.

"A custom is a law established by long usage." 12 Cyc. 1030.

CLASSES OF CUSTOMS.

"Laying aside the general common law customs and the general customs of merchants already referred to, customs and usages may be divided into three classes, viz: (1) Particular customs, or the usages of particular places; (2) usage of trade, or the customs of particular trades or occupation, and (3) customs of particular persons. 12 Cyc. 1033.

"The elements of antiquity need not be shown in the case of a usage or custom of trade. All that is required is to show that it is established, that is, that it has existed a sufficient length of time to have become generally known." 12 Cyc. 1034.

"(1) In general: General commercial usages—all men being presumed to know the law—all men are presumed to know and no one will be heard to contradict the presumtion." 12 Cyc. 1044, citing:

Toledo L. & M. Ins. Co. v. Sheares, 16 Ind. 52;
Grant v. Lexington F., etc., Ins. Co., 5 Ind. 23;
Williams v. Ins. Co., 50 Iowa 561;
Beatty v. Gregory, 17 Iowa 109;
Rindskoff v. Barrett, 14 Iowa 101;
Howard v. Ins. Co., 109 Mass. 384;
Hunter v. Locke, 5 Hill 437 (N. Y.);
Sleight v. Hartshorne, 2 Johns 531 (N. Y.-;
Buek v. Grinshaw, 1 Edw. 140 (N. Y.-;
U. S.—Barrett v. Williamson, 2 Fed. Cas. No. 1051, 4 McLean 589.

The testimony of one witness who has adequate means of knowledge may be sufficient to prove the existence of a usage in a given trade or business." 12 Cyc. 1030.

"Some courts hold that one witness may be sufficient if the testimony is clear in every particular and uncontradicted."

Robinson v. U. S., 13 Wall 363;

Greenwich Ins. Co. v Waterman, 54 Fed. 839;

Jones v. Haly, 128 Mass. 585; 3 Ency. of Evidence

3 Ency of Evi. 959.

Some exceptions to the general rule as to hearsay testimony and which we think are applicable to the facts in this case are as follows:

While a witness cannot testify to the existence of a fact of which he has no personal knowledge, he is not necessarily precluded from stating what certain unsworn statements show, and assuming them to be correct, what they prove. 16 Cyc. 1198.

San Pedro Lumber Co. v. Reynolds 121 Cal. 74.

State v. Brady, 100 Iowa 191.

Masonic etc. Soc. v. Lackland. 97 Mo. 137.

"Where evidence statse the result of volumnious facts, or of an inspection of books and papers which cannot conveniently take place in court, the objection of hearsay does not apply.

Masonic etc. Soc. v. Lackland, 97 Mo. 137.

1 Greenleaf Er. (14 Ed.) Sec. 93.

We think the above authorities are applicable to the case at bar.

Respectfully submitted,

BUCKNER F. DEATHERAGE,

SAMUEL H. COWAN,

Attorneys for Complainant.

Supreme Court, U. S.
FILED
NOV 12 1919
JAMES D. MAHER,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1919.

No. 137.
E. B. Spiller, Plaintiff in Error,
vs.
Atchison, Topeka & Santa Fe Railway Company.

No. 138.
E. B. Spiller, Plaintiff in Error,
vs.
Chicago & Eastern Illinois Railroad Company.

No. 139.
E. B. Spiller, Plaintiff in Error,
vs.
Chicago & Alton Railroad Company.

No. 140.
E. B. Spiller, Plaintiff in Error,
vs.
The Missouri Pacific Railway Company.

No. 141.
E. B. Spiller, Plaintiff in Error,
vs.
St. Louis, Iron Mountain & Southern Railway Company.

No. 142.
E. B. Spiller, Plaintiff in Error,
vs.
St. Louis & San Francisco Railroad Company.

No. 143.
E. B. Spiller, Plaintiff in Error,
vs.
Chicago, Rock Island & Pacific Railway Company.

No. 144.
E. B. Spiller, Plaintiff in Error,
vs.
Illinois Central Railroad Company.

No. 145.
E. B. Spiller, Plaintiff in Error,
vs.
Missouri, Kansas & Texas Railway Company.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE EIGHTH CIRCUIT.

BRIEF OF THE PLAINTIFF IN ERROR.

SAMUEL H. COWAN,
BUCKNER F. DEATHERAGE,
Attorneys for Plaintiff in Error.

I. H. BURNEY,
GOODWIN CREASON,
Of Counsel.

INDEX.

	Page
Statement	1
Some of the evidence as to ownership and who paid the freight	10
Evidence as to the assignments	34
Assignment of Errors	48
Brief and Argument	52
Jurisdiction	52
There was sufficient evidence before the Commissioner, etc.	53
The evidence on which the award by the Commissioner was based was not hearsay	72
The shipper and owners being in possession of the live stock [redacted] delivered to the carriers were prima facie the owners	74
The carriers cannot question the title of the consignors because the carriers were bailees	77
There was sufficient evidence to support the findings of the Commissioner, etc.	78
There was no objection of any kind before the Commissioner to the sufficiency of the proof of the assignment	84
Reason for the Rule	92

Page

Citations.

Allen v. Brown, 44 N. Y. 228 93
Atchison v. Ry. Co., 80 Mo. 213 77
Ballinger v. Vates, 26 Colo. St. 116 90
Belford v. Scribner, 144 U. S. 488 75
Bradshaw v. Ashley, 180 U. S. 589 75
Carter v. Southern R. Co., 111 Ga. 38 77
Chase v. Dodge, 111 Wis. 70 92
Comegys v. Vasse, 1 Pet. 193 .....79, 80
Commerce Act, Secs. 13 and 17 70
Cooley on Torts (3 Ed.) pp. 848, 849, 850 76
Corpus Juris, 958, Sec. 145 91
Cottle v. Cole, 20 Iowa, 481 92
Cummings v. Morris, 25 N. Y. 625 92
Cowdrey v. Vandenburgh, 110 U. S. 572 91
10 Corp. Juris. 229, Sec. 318 77
5 Corpus Juris, 958, 985, 994 79
5 Corpus Juris, 593. .....79, 82
5 Corpus Juris, 958. .....90, 91
5 Corpus Juris, 593. 96
17 Cyc. p. 564 72
17 Cyc. Sec. 92, p. 166 72
16 Cyc. 1074 75
6 Cyc. 434-5. 77
4 Cyc. pp. 23-26. 79
4 Cyc. 23. 80
4 Cyc. 26. 82
4 Cyc. 69. 90

Page

4 Cyc. 67 90

Davis v. R. R., 25 Fed. 786. . . . . .79, 81

Denver, etc. R. Co. v. Frame, 6 Colo. 382. 77

Denver Eng. Works v. Elkins, 179 Fed. 922. 90

Edmunds v. Ill. Cent. R. R., 80 Fed. 78. . . . . .79, 82

Edmunds v. Ill. Cent. R. R., 80 Fed. 78 93

Foster v. Central Nat. Bank, 138 N. Y. 379. 92

George v. Tate, 102 U. S. 564. 79

George v. Tate, 102 U. S. 564. 90

Great Western R. Co. v. McComas, 33 Ill. 185. . . . 77

Gregory v. Dodge, 14 Wend. 593, 617 . . . . . .72, 89

Grieg v. Riordan, 99 Cal. 316. 90

Guerney v. Moore, 131 Mo. 650. 92

Hazard Powder Co. v. Volger, 58 Fed. 152. 75

Hentz v. The Idaho, 93 U. S. 575. 77

Hudson v. Willis, 73 Texas, 256 76

Hutchinson on Carriers, Sec. 1308 (3 Ed.) Secs. 1309, 1318, 1320 76

Irwin v. U. S., 97 U. S. 396. 79

I. C. C. v. Alabama & Midland R. Co., 168 U. S. 146 101

I. C. C. v. Baird, 194 U. S. 25. 72

I. C. C. v. Baird, 194 U. S. 44 53

I. C. C. v. C. R. I. & P., 218 U. S. 110. 53

I. C. C. v. C. R. I. & P. R. R., 218 U. S. 110. .97, 98

I. C. C. v. D. L. & W. R. R., 220 U. S. 235. 97

L. & N. R. v. Finn, 235 U. S. 601 53

L. & N. R. R. v. Finn, 235 U. S. 600, 608. 70

I. C. C. v. Ill. Cent. R. R., 215 U. S. 452. 97

Page

Illinois Central R. Co. v. I. C. C., 206 U. S. 441.. 99

Ill. Cent. R. Co. v. I. C. C., 206 U. S. 441..... 100

I. C. C. v. Ill. Cent. R. R., 215 U. S. 470..... 101

I. C. C. v. L. & N. R. R., 227 U. S. 93.....53, 70

I. C. C. v. L. & N. R. R., 227 U. S. 88..... 72

I. C. C. v. L. & N. R. R., 227 U. S. 88..... 97

I. C. C. v. L. & N. R. R., 227 U. S. 88..... 101

I. C. C. v. L. & N. R. R., 235 U. S. 320..... 101

I. C. C. v. Northern Pacific R. R., 216 U. S. 544.. 101

Interstate Commerce Commission v. Union Pacific R. R., 222 U. S. 541, 545 101

In 5 Corpus Juris, 994, Sec. 199, it is said..... 91

Kane v. Mo. Pac. R. R. Co., 251 Mo. 13 72

King v. Miller, 53 Ore. 53-62..... 92

Krapp v. Eldridge, 33 Kan. 106 92

L. & N. R. R. v. Finn, 235 U. S. 606 72

Manufacturers Ry. Co. v. U. S., 246 U. S. 457, 489 97

Many cases cited note 99, p. 985, of 5 Cor. Jur.... 91

Marvin v. Ellis, 9 Fed. 367..... 92

Mathis v. O'Neal, 94 Mo. 527 72

Meeker v. Lehigh Valley R. R. Co., 236 U. S. 412. 99

Meeker v. Lehigh Valley R. R. Co., 236 U. S. 412. 100

Mills v. Lehigh Valley R. R. Co., 238 U. S. 473.. 99

Mills v. Lehigh Valley R. R. Co., 238 U. S. 473... 100

Mitchell Coal Co. v. Penn. Rv., 230 U. S. 247.... 98

Mitchell Coal & Coke Co. v. Penn. Ry. Co., 230 U. S. 247 99

Mitchell Coal & Coke Co. v. Penn. Ry. Co., 230 U. S. 247 100

Page

Parsons Case, 167 U. S. 447 83
Pomeroy's Remedies & Rem. Rights, Sec. 617... 79, 81
Pomeroy's Remedies & Rem. R., Sec. 132..... 91
Railway v. Johnson, 54 Fed. 474 76
Railway v. Lewis, 51 Fed. 658 76
Remmers v. Remmers, 217 Mo. 560, 561..... 79
Ross v. Ry. Co., 119 Mo. App. 290..... 77
Rucker v. Bolles, 80 Fed. l. c. 510 79
Rucker v. Bolles, 80 Fed. 504, 511..... 80
Scott v. Lunt, 7 Pet. 596..... 91
Sheridan v. N. Y., 68 N. Y. 30..... 93
Southern Pac. v. Darnell, 245 U. S. 531, 535....52, 74
Southern Pacific R. R. Co. v. Darnell-Taenzer Lbr. Co. et al., 245 U. S. 531 99
So. Pac. R. Co. v. Darnell-Taenzer Lbr. Co., 245 U. S. 531 100
Southern Pacific Co. v. I. C. C., 219 U. S. 433.... 101
St. L. & W. R. Co. v. Samuels, 211 Fed. 588, 593. 102
Southern Ry. Co. v. Tift, 206 U. S. 428 99
Southern Ry. Co. v. Tift, 206 U. S. 428..... 100
Texas & Pac. R. R. Co. v. Abilene Oil Co., 204 U. S. 426, 444 97
Texas & Pac. R. R. Co. v. Abilene Oil Co., 204 U. S. 426 99
Texas & Pac. R. Co. v. Abilene Oil Co., 204 U. S. 426 100
The Carlos F. Ross, 177 U. S. 655 75
U. S. v. L. & N. R. R., 235 U. S. 314, 320..... 97
Valentine v. Long Island R. Co., 92 N. Y. Supp. 645. 77

Page

Western Transp. Co. v. Barber, 56 N. Y. Supp. 44 77

Western Union Tele. Co. v. Western etc., 91 U. S. 283. 91

Wigmore on Evidence, Vol. 1, Sec. 18..... 72

Wigmore on Evidence, Sec. 586 72

Wigmore, at page 166 73

Winstead v. Bingham, 4 Woods (U. S.) 510..... 91

Woolf v. Edmondson, 240 Fed. 53 72

Wothers v. Green, 9 How. 213..... 91

IN THE

Supreme Court of the United States

OCTOBER TERM, 1919.

No. 137.
E. B. Spiller, Plaintiff in Error,
vs.
Atchison, Topeka & Santa Fe Railway Company.

No. 138.
E. B. Spiller, Plaintiff in Error,
vs.
Chicago & Eastern Illinois Railroad Company.

No. 139.
E. B. Spiller, Plaintiff in Error,
vs.
Chicago & Alton Railroad Company.

No. 140.
E. B. Spiller, Plaintiff in Error,
vs.
The Missouri Pacific Railway Company.

No. 141.
E. B. Spiller, Plaintiff in Error,
vs.
St. Louis, Iron Mountain & Southern Railway Company.

No. 142.
E. B. Spiller, Plaintiff in Error,
vs.
St. Louis & San Francisco Railroad Company.

No. 143.
E. B. Spiller, Plaintiff in Error,
vs.
Chicago, Rock Island & Pacific Railway Company.

No. 144.
E. B. Spiller, Plaintiff in Error,
vs.
Illinois Central Railroad Company.

No. 145.
E. B. Spiller, Plaintiff in Error,
vs.
Missouri, Kansas & Texas Railway Company.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE EIGHTH CIRCUIT.

STATEMENT.

(The figures in parenthesis refer to number of page of printed record.)

In March, 1903, the defendants in error and other railroads made an advance of three cents per one hun-

dred pounds, in addition to certain advances made in 1899 and 1900, in freight rates on cattle shipped from Texas, Oklahoma and other territory to Kansas City, St. Louis, Chicago, and other markets. In February, 1904, the Cattle Raisers Association of Texas, a voluntary association, in behalf of its members and others interested, under Sec. 13 of the Act to Regulate Commerce, filed its petition with the Interstate Commerce Commission, charging that the rates established in 1903 were unjust and unreasonable. The commission, on August 16, 1905, decided (11 I. C. C. 296) that the advances were unjust and unreasonable. At that time the commission was not empowered to fix rates for the future. The Hepburn bill, passed June 28, 1906, gave the commission such power, effective August 28, 1906.

On August 29, 1906, the Cattle Raisers Association, on behalf of its members and others interested, filed a motion to reopen the case, in order that the commission might fix the rates for the future. On April 14, 1908, the commission again found the rates as increased in 1903 were unjust and unreasonable, and in July, 1908, made an order prescribing as reasonable rates those which were in effect previous to the advances made in 1903, the difference being three cents per one hundred pounds in most cases.

Thereafter, the defendants in error and other carriers filed suit in the United States Circuit Court at St. Louis, to enjoin the enforcement of the rates prescribed by the commission. A preliminary restraining order was denied, and subsequently after a full hearing, upon

voluminous testimony and briefs and argument before the master in chancery and upon the master's report before Judges Van Devanter, Adams and Sanborn, the right of injunction was denied and the bill dismissed (decision not published). The reduced rates took effect November 17, 1908.

After such decision of the United States Circuit Court of Appeals at St. Louis, upholding the decision of the commission on the unreasonableness of the advanced rates and the reasonableness of the rates fixed by the commission in the second hearing, for the future, the Cattle Raisers Association, for and on behalf of its members and other shippers, presented to and filed with the Interstate Commerce Commission claims for reparation based on the rate found unreasonable. All the claims were filed within the time provided by law, which fact was admitted by defendants in error's counsel at the trial in the district court (R. 331). The claims were all filed for and in the name of the owners of the cattle shipped (R. 201, 202, 223). Some of the claims had been assigned to H. E. Crowley, Secretary and Manager of the Cattle Raisers Association. He was superseded as such secretary and manager by plaintiff in error, and Mr. Crowley assigned to the plaintiff in error all claims assigned to Mr. Crowley. Many of the other claims were assigned direct to the plaintiff in error.

All of the claims involved in this case were assigned to plaintiff in error after the same had been filed with the commission and before the commission made

its order of reparation herein. The assignments were made from time to time. There were assignments made to the plaintiff in error after the order of reparation, but none of such assignments are involved in this case.

There were three hearings before the commission on the claims for reparation, viz., September 19th and 20th, 1912, January 24, 1913, and October 17, 1913, all at Chicago. At the first hearing, there was some discussion between counsel for both sides and Commissioner Prouty, before whom the hearing was had, as to the best method of proving the shipments, who were the owners, who paid the freight, and the amount and measure of damages. The carriers requested the plaintiff in error to furnish to them the car numbers of all the shipments. This the plaintiff in error could not do, because he had no data and contended it was not necessary for him to furnish the car numbers if the shipments could be identified otherwise. At Commissioner Prouty's suggestion, abstracts of all the claims were prepared by plaintiff in error, showing all claims of each shipper against each railroad, the point of origin, destination, name of consignor, name of consignee, name of the owner and claimant, number of cars, date of shipment, weights, rate paid, rate ordered and difference between the two rates. Such abstracts, or copies thereof, were furnished each defendant in error, to check with their records. A sample sheet of the abstract so furnished was introduced at the trial of this case in the district court (See Exhibit 2, R. 309).

At the next hearing the carriers reported to the commission and by counsel before the commission admitted the movement of certain of the cars, as stated, and the payment of the charges, that is the payment of the freight at the excessive rate. The number of the cars and identification thereof, so admitted, appeared upon the abstracts, which they returned and which were filed with the commission. No claims not so checked by the carriers were allowed by the Commission. The Commission so states in its report and findings of fact. Reference to the testimony before the Commission will be made hereafter. The Commission made findings of fact as shown in full at page 104, *et seq.* of the transcript of the record, and ordered each defendant in error to pay to the plaintiff in error as assignee of the owner, the amount set forth in appendix "A" attached to the Commission's supplemental report (R. 189).

The findings and order of the Commission were made on January 12, 1914. No question arises as to the sufficiency of the findings. The order was duly served upon each defendant in error. Within one year thereafter plaintiff in error commenced this suit in the United States District Court for the Western District of Missouri, Western Division, to recover from each defendant in error the amounts ordered to be paid, together with a reasonable attorney's fee. The suit was under Section 16 of the Act to Regulate Commerce and all the defendants in error were joined as defendants, as provided by that section.

The findings of the Commission showed in Appendix A, which was made a part thereof, exactly what claims had been assigned to Mr. Crowley, by the letter C following the name of the consignor. It also showed exactly what claims were assigned to the plaintiff in error, by the letter S following the name of the consignor. And it showed what claims were not assigned, by the absence of the letter C or the letter S. So that it appeared definitely and certain from the findings of the commission what claims had been assigned and what claims had not been assigned. The evidence showed clearly that all claims that had been assigned to Mr. Crowley were afterwards assigned by him to the plaintiff in error. The order of reparation was made to pay to plaintiff in error the amounts of all claims assigned to him, and to pay to the owners and shippers the amounts of the claims not assigned, as shown by said Appendix "A." (R. 106, 107, 294, 295).

At the trial in the district court, plaintiff in error introduced the findings and order of the Commission and proof as to reasonable attorneys' fees, and rested. It may be here stated that no question arises on this appeal as to the amount allowed by the district court for attorneys' fees.

The defendants in error introduced a transcript of the oral testimony before the Commission on the hearing for reparation. None of the exhibits introduced before the Commission were introduced at the trial in the district court, nor were any of the pleadings

or petitions for reparation filed before the Commission introduced at the trial of this case in the district court.

The defendant, Illinois Central Railway Company, introduced some testimony showing an error in the amount allowed against it by the Commission, which error was corrected by the judgment of the district court. Respondents introduced no other testimony bearing upon any of the questions here involved.

The district court gave judgment for the plaintiff in error against each defendant in error for the amount ordered by the Commission to be paid by that defendant in error to plaintiff in error, with interest and attorneys' fees fixed by the court. The total amount, exclusive of attorneys' fees and costs aggregated $181,190.87.

Each defendant in error sued out a separate writ of error from the judgment against it, from the United States Circuit Court of Appeals for the 8th Circuit, but by stipulation the case was heard in the Court of Appeals on the record in the case of Atchison, Topeka & Santa Fe Railway Company.

On October 26, the Court of Appeals decided the case, reversed the lower court and remanded the case and ordered a new trial (246 Fed. 1).

In due time the plaintiff in error filed a petition for rehearing in the United States Circuit Court of Appeals, which was overruled on March 11, 1918. But that court modified its opinion as to the proof and measure of damages, and overruled all that part of its opinion on that question insofar as it conflicted with the decision of this

court in *Southern Pacific Co.* v. *Darnell-Taenzer Lumber Co.*, 245 U. S. 531, its order in that respect being as follows (omitting caption):

> "Since the opinion of this court in the above case was filed, the Supreme Court has decided, in *Southern Pacific Co. et al.* v. *Darnell-Taenzer et al.* (January 28, 1918) that where a shipper has paid a rate afterwards declared to be excessive by the Interstate Commerce Commission, he may recover as damages the difference between the excessive rate and the rate declared to be just and reasonable by the Commission, without proof of actual injury. It results that anything said in the opinion of this court contrary to the above decision is overruled. Our judgment, however, was not based alone upon our opinion as to what was the lawful measure of damages, but on other grounds mentioned in the opinion, to which we still adhere. The motion for rehearing is, therefore, denied. Filed March 11, 1918" (R. 453).

The Court of Appeals detailed at some length what transpired at the hearings before the commission, and among other things said: "What we have stated covers all the evidence that was before the Commission and sustain its order" (R. 388).

That the Court of Appeals was in error in making that statement, we will undertake to show hereafter, by reference to the testimony not quoted by the court in its opinion. The court reversed and remanded the case upon the ground that the evidence was not sufficient before the Commission to show who owned the cattle shipped and who paid the excessive freight thereon. Also that the evidence was not sufficient to show that the claims upon

which the order or reparation was based had been properly, legally and duly assigned to plaintiff in error. Also that, even if the proof before the Commission was sufficient to show the proof and assignment of the claims, yet that the evidence showed that the purpose of the assignment was not such as to vest the legal title to the same in plaintiff in error so as to authorize the Commission to make the award of damages to him.

The court further held that in proceedings before the Commission, counsel was not required to present objections to inadmissible testimony with the same nicety as in actions in court, and that inadmissible or objectionable testimony, although not objected to when offered before the Commission and although received by said Commission, should not be considered by the court in support of the Commission's order. The court held that the question whether the rate exacted was unjust and unreasonable or not is open to determination by the court or jury, contrary to the decisions of this court in *Texas & Pacific Ry. Co.* v. *Abilene*, 204 U. S. 426; *Interstate Commerce Commission* v. *C. R. I. & P. R. R.*, 218 U. S. 40, and other cases.

It further held that, where a rate subsequently condemned by the Interstate Commerce Commission as unreasonable was when exacted a legal rate, that the shipper could not sue in a court of law and recover back any portion of such rate.

Other errors committed by the Court of Appeals in its opinion, as claimed by plaintiff in error, will be set forth in the assignment of errors. Without repeating

any of the testimony quoted by the Court of Appeals in its opinion, we call attention to some of the other testimony before the Commission not mentioned by the Court of Appeals, which it seems to us is pertinent to the issue as to whether there was any evidence to support the order of the Commission.

Some of the evidence as to ownership and who paid the freight.

Mr. Cowan, attorney for plaintiff in error, at the prior hearing before the Commission, said:

"I may explain for the purpose of the record that ordinarily the cattle shipper keeps no definite sort of books; he depends on his commission company to do that. In all the cases we have the shipments are consigned to commission companies at the various markets. The commission companies sell the cattle and make up an account of sales so-called, transmitting to the shipper or owner the proceeds after deducting out of the proceeds the amount of freight, feed charges and other charges of that character. They kept regular sets of books which are made up from the memoranda, consisting of the expense bills that are furnished by the stock yards companies, which generally collect the freight and distribute the money to the railroads, and by the scale tickets that are turned into the office on the sale of the live stock. Those memoranda are generally destroyed. I do not think they exist, probably could not be found at all after a short time, because the commission men say that such an amount of stuff would be a great burden for the commis-

sion companies to keep, so they depend upon their original books of entry from which the accounts sales are made out."

"The Cattle Raisers' Association applied to the commission companies to make up a statement from each of their customers to show the shipment made and the freight paid. Most of the commission companies complied with the request and it was made up on blanks printed and furnished for that purpose, and made it in duplicate or in triplicate; in some cases duplicates and some cases triplicates" (R. 202).

"In order to ascertain the amount of the overcharge Mr. Williams was furnished with a statement made up by the tariff department of the Interstate Commerce Commission, showing for each station the old rate and the rate fixed by the Commission, and from those figures has compiled the amount that each one is entitled to on each car load" (R. 203).

"Commissioner Prouty: Now, just what would the Commission agent be able to testify to from his books? Suppose he was to come before some examiner of the Commission and produce his books, just what would he testify to?

Mr. Cowan: The most that I know is that he could testify they kept their books correctly, that this is a regular entry made at the time of the transaction—

Commissioner Prouty: What do his books show?

Mr. Cowan: His books will show the owner of the cattle, the amount of the freight—

Commissioner Prouty: In this case, would the

books show that Mr. Aikens was the owner of these cattle?

Mr. Cowan: Undoubtedly.

Commissioner Prouty: He was the man they settled with?

Mr. Cowan: Oh, yes; he was the man they rendered the account sales to.

Commissioner Prouty: What else would they show? They would show that the cattle were received?

Mr. Cowan: That the cattle were received, sold and that the freight was paid, advance charges paid and the balance of the money remitted (R. 208, 209).

Mr. Cowan: We have the original statements made by each commission company (R. 211).

Mr. Cowan: Well, it seems the commission company received the live stock and paid the freight and their regular set of books shows they did that. It seems to me that the evidence of the payment of freight thus produced is amply sufficient without going into the question of the car numbers or things of that sort (R. 212, 213).

Mr. Cowan: Now, Mr. Brooks, your billing will show the name of the care taker?

Mr. Brooks: Yes, sir.

Mr. Cowan: Your billing does not show the name of the owner?

Mr. Brooks: No.

Mr. Cowan: The commission company's books, however, show the name of the owner?

Mr. Brooks: Yes.

Mr. Cowan: And for whom the freight was paid, and for that reason it seems to me the commission company's books are the ones to show who really paid the freight, and if you went and got all your tickets they would show the caretaker and not the owner of the cattle (R. 215).

* * * * * * *

Mr. Cowan: Mr. Williams, you heard my statement this morning with respect to the character of information furnished the Cattle Raisers' Association of Texas by the live stock commission companies at the various markets. Were you during this time in the employment of the Cattle Raisers' Association?

Mr. Williams: Yes, sir.

Mr Cowan: Are you familiar with the facts which I have stated?

Mr. Williams: Yes, sir.

Mr. Cowan: Were those statements which have been made, filed with the Interstate Commerce Commission furnished to the secretary's office of the Cattle Raisers' Association before they were sent to Washington?

Mr. Williams: Yes, sir (R. 216).

Mr. Cowan: You were then working under Mr. Crowley, the secretary of the association?

Mr. Williams: The first part I was; the second part I was under Mr. Spiller.

Mr. Cowan: Will you state for the purpose of the record, as to whether what I said about it is the correct history of the making up of these statements?

Mr. Williams: It is, to my knowledge.

Mr. Cowan: Were the statements that were furnished by the commission companies furnished in duplicate, one set filed with the Interstate Commerce Commission, and the other set left in the office of the Cattle Raisers Association?

Mr. Williams: Well, the data was furnished by the commission companies and tabulated from that office and furnished to the Interstate Commerce Commission.

Mr. Cowan: Are you able to testify that the data which you now have here compiled from statements made by the commission companies is correctly compiled and shows truly the figures as furnished by the commission companies?

Mr. Williams: We have been very painstaking, and tried to get it exactly correct.

(446) Mr. Cowan: Have you examined the books and records of any of the commission companies in Kansas City and St. Louis, to ascertain the facts as to whether or not they keep a record showing the consignors and themselves as the consignee, the date of the shipment, the number of cars and the amount of freight paid, as reflected in the compilation which you have made?

Mr. Williams: Yes, sir; I have.

Mr. Cowan: Do you know whether or not it is a fact that live stock shippers keep records of their shipments or whether they depend upon the commission companies to do so?

Mr. Williams: There are very few of them that

keep any records themselves. They depend upon the commission company as their agent to represent them, just as somebody else depends on their attorney, and such as that. In case where they need to look up the information, they always write to the commission company and ask for a duplicate account sale or any other information they may desire. While in Kansas City and St. Louis the other day I was very particular to look into that and to ask them if I should come into their office and say I shipped a certain number of cars of cattle there in 1906, if they could tell me all the information you asked a minute ago, and everyone whom I asked said yes, that they could with their records and the records of the stock yards company, give all that information.

Mr. Cowan: Are you familiar with the fact that when this case was decided by the Interstate Commerce Commission, holding these rates were unreasonable, that circular letters were issued to members of the Cattle Raisers Association and to others shippers, to furnish the information as to the date of their shipments, the number of cars shipped, where from and to where? Are you familiar with that fact?

Mr. Williams: I remember it, yes, sir.

Mr. Cowan: Now, is it or not a fact that the shippers in practically all cases referred the secretary of the association to the commission company?

Mr. Williams: In a great many cases they just simply forwarded our letter to the commission company

and they sent us the data in connection with the return of the letter sent them by the shipper.

Mr. Cowan: Is it or not a fact that in all cases where freight was paid on a shipment of cattle that the amount of money is paid by the commission company to the railroad and deducted out of the account sales?

Mr. Williams: That is my understanding, that it is always done except possibly a few exceptions where some payments might be made in advance; my understanding, however, is that it is always paid by the commission company.

Mr. Cowan: And deducted out of the account sales?

(447) Mr. Williams: Deducted from the proceeds.

Mr. Cowan: Do you know of any case in which that is not done?

Mr. Williams: I don't know of any.

Mr. Cowan: You have seen a great many account sales?

Mr. Williams: Yes, sir.

Mr. Cowan: And that is always the case according to your information?

Mr. Williams: As far as my personal knowledge and information is concerned (R. 216, 217, 218).

Mr. Cowan: You had before you the order of the Interstate Commerce Commission in this case?

Mr. Williams: Yes, sir; showing the rates which should have been charged.

Mr. Cowan: And you had a statement from the tariff department of the rate from each and every station, the old rate and the new rate?

Mr. Williams: Yes, sir.

Mr. Cowan: Are you able to state that the compilation you have made as to the amount of the overcharge is correct?

Mr. Williams: I have every reason in the world to believe that is correct. I have been very diligent in trying to get it so" (R. 220).

"Mr. Cowan: Mr. Davis, Mr. Williams and I went out to the stock yards—examined the books of Evan-Snider-Buel Company, and Clay, Robinson & Company. We found they have very complete records here. The complete data with respect to shipments is contained in the commission company's books.

We found that they do not have as complete data either at St. Louis or Kansas City; at least the bookkeeper or secretary of the Evans-Snider-Buel Company told us they did not keep as complete a record of either Kansas City or St. Louis as they do here. Then we went to the office of the Santa Fe agent there at the stock yards and his books show every shipment, car number, all of the charges, the freight paid, the initials of the car, and as far as I could see, an absolutely complete record.

Mr. Norton: Where was that?

Mr. Cowan: The Santa Fe office at the stock yards. He thinks that they keep the same records at Kansas City. There is not the slightest trouble of identifying

every shipment, according to the record that is kept here in Chicago, if they keep the same sort of record at Kansas City.

Mr. Davis was with me, and he looked it over. The agent there does not think there is any difficulty at all in identifying every shipment. Every one of those accounts must check with each other. I saw Mr. Witten, the general superintendent of the Stock Yards, Mr. Witten, the general superintendent of the Stock Yards Company, and he said that the record of the Commission Company and the record of the railroad company (448) and the record of the Stock Yards Company absolutely must correspond, and that there wasn't any difficulty at all, in his opinion, of identifying every shipment.

As far as I could see, if we give the date and the number of cars shipped and the name of the consignee, the commission company, there isn't any difficulty at all except the amount of labor that will be required of a clerk to take these records and identify every shipment beyond any question. That is the way it looked to me. Now, I do not know what Mr. Davis thinks about it. If he has arrived I think he will substantiate that statement" (R. 230).

"Commissioner Prouty: Why, they show that the commission merchant received a certain number of car loads of cattle and a certain number of cattle from a certain individual in Texas. Those cattle were shipped from a certain point, were sold on account of this man

at Kansas City and the proceeds, less freight, receiving charges and so forth, were remitted to him.

Mr. Norton: The witness said yesterday that those books might show the cattle in the name of the caretaker and not the owner at all.

Commissioner Prouty: No, I don't think so, because the accounts are kept in the name of the owner. He did say, however, that if the shipping receipt was produced that that would be signed by the caretaker" (R. 233).

"Mr. Cowan: In reply to what Mr. Wood has said, for the purpose of the record, I desire to say that all of these railroad companies collected the money from the commission companies. The commission companies pay the money for the shipper. The car number is entirely immaterial. It does not make one bit of difference except for the purpose of their being able to check it up against a connecting line in order to make each connecting line pay the amount that it ought to pay by reason of the divisions of the freight rates that these lines have between one another" (R. 239).

"Commissioner Prouty: Do they show the point of origin, that is, do they show from what point the shipment was made?

Mr. Cowan: I am not able to answer that question, except that the books out here in the office of Evans-Snider-Buel and Clay-Robinson do.

Commissioner Prouty: These statements of yours all show the point of origin?

Mr. Cowan: I think so. Is that right, Mr. Williams?

(449) Mr. Williams: Yes, sir.

Commissioner Prouty: How did you get that, Mr. Williams?

Mr. Williams: For the most part it came from the commission company. In some instances where the commission company might have failed to give it, we wrote the shipper and asked him as to what point it originated from. But for the most part it is from the commission company itself" (R. 244).

At the second hearing, January 24, 1913:

"Mr. Cowan: Now, we have examined the commission companies' books again. We have also applied to the Stock Yards Company for information, meeting with the same refusal we have met before. We are prepared to show now by the books of the Evans-Snider-Buel Company, that being the company that does business in Kansas City, the markets—as being representative. We have a witness here, Mr. Moore, who has been engaged in the business many years, managing the accounting department of the Evans-Snider-Buel Company, and he has brought the books of original entry, as requested by Your Honor, and is prepared to show that it shows the source of information to which the examiner of the commission could go to secure everything we propose to prove" (R. 247).

"Commissioner Prouty: The ordinary course of business, as I understand it, was to ship in these cattle, the consignor being ordinarily the owner of the cattle,

but as I recall it, some cases were pointed to in the former hearing in September, when the consignor was not the owner of the cattle. Is that right?

Mr. Cowan: That is true, but not in our statement, for the reason that we took our statements from the commission companies who would really be the party who signed the shipping contract, but the man who owns the cattle and makes out the account sales and deducts the freight, so in all cases we have named here, we have the consignor who was in fact the owner, regardless of whether the billing was in his name or not.

Commissioner Prouty: Who was the consignee, No. "E"?

Mr. Williams: In most case this line on top represents the owner or claimant, and under the heading of consignor is the name in which the cattle was shipped, as I suppose they would appear on the railroad companies' books, but the commission companies' records, as furnished us, would show who was the owner and entitled to this over charge.

Commissioner Prouty: Where do you get your information which you put at the top of the sheet, showing the owner?

(450) Mr. Williams: From data furnished by the commission companies. In some cases—

Commissioner Prouty: Are there a good many cases where the name of the claimant is not the same as the name of the shipper or consignor?

Mr. Williams: I hardly know. I suppose there are a good many; I do not remember right now, but I

think in all cases they are shown as the consignor in the heading there. We tried to make that the name of the party in whose names they were shipped, so the railroads could more easily check them up.

Commissioner Prouty: In a case of that kind, Mr. Cowan, of course the railroad has no information except as to the party who acted as consignor.

Mr. Cowan: That is all the information the railroad company has, but the commission companies' books in all cases of course, dealing with the man who is the owner, always show who paid the freight; and that ought to be, and I think it is, in all these sheets, is it not, Mr. Williams?

Mr. Williams: Yes" (R. 252).

"Mr. Cowan: The proof consists, as I explained here before, of the books of original entry of the commission company, who on account of Aaron & Hughes, paid the money. That was the reason that we had a little controversy before Your Honor here before, in regard to the commission companies' books. They are the books of original entry and the only books which show the payment of the freight for and on account of the actual shippers who moved the cattle" (R. 254).

"Commissioner Prouty: * * * Now, the question is whether you would require Mr. Cowan to produce these books and establish that fact with respect to every shipment; and I am addressing this same question to all the attorneys here, if the matter comes up in the same way.

Mr. Norton: Speaking for myself on the impulse

of the moment, I should not want to put Mr. Cowan to any unnecessary work, and it would amount to unnecessary work for us. I should imagine that these books might be examined, something as a master would examine them, and let him make a report.

Commissioner Prouty: That is, you would like to have the books brought in before the examiner, who is to take this evidence, and have them examined in a general way by you, so you can see—

Mr. Norton: No, I do not think I would go that far. I presumed they might be examined out there by him.

Commissioner Prouty: That is, you would allow the examiner to go out there and examine the books?

(451) Mr. Norton: I rather think so, answering on the spur of the moment, in company with somebody representing our company (R. 255).

Mr. Cowan: * * * Now, I ask the attorneys of the railroads as they probably now know, whether it is the fact that in all cases the freight was paid by the commission company and deducted out of the account sales of the cattle, as I have stated. I presume all you gentlemen know that to be the case. Is that right, Mr. Wood?

Mr. Wood: I do not know anything about it, except what you say about it, judge.

Mr. Cowan: I would like to call Mr. Moore, who has spent many years in the commission business. He has kept the books of the firm of Evans-Snider & Buel, and he has the books here, so as to explain for the pur-

pose of the record and for the information of the commissioner just what the course of proceeding is.

Mr. Norton: I think that was stated in the other hearing. I think our own live stock man stated that.

Mr. Cowan: I think he did.

Mr. Norton: We are anxious to get to another meeting, and you can put that in, if necessary, later (R. 257).

Mr. Cowan: If required to do it, we would have to do that, as a matter of law and evidence. But the reason I brought Mr. Moore, was the suggestion made by Your Honor before, that before appointing an examiner to go into those books, the commission would like to examine one set of books from some concern to see that we have the source of information to which the examiner can refer. Now, we have that here.

Commissioner Prouty: That was upon the proposition that the carriers were not going to check these accounts at all.

Mr. Cowan: I know that.

Commissioner Prouty: They have not checked up, or Mr. Norton for his company has checked up these accounts as far as he can. Now, if you find you cannot locate these thousand cars by the books of the railroads, and the stock yards, and that you have to rely upon some other evidence to show the fact of the shipment, and the payment of the money, then it may be necessary to hear these commission men. But I do not think you have reached the point" (R. 258).

(The commissioner was referring to about 1,000

cars out of a total of 5,000 not checked up by the Santa Fe. That road checked 4,000 cars out of 5,000. The 1,000 cars not checked were not included in the order.)

"Commissioner Prouty: * * * I understand the course of business to be that these cattle are sold on the market by (452) some commission men, and the freight money is paid by the commission man and deducted from that amount received from the sale of the cattle and the balance remitted to the owner, which, of course, amounts to a payment by the owner. Do you make any question that the consignor did in that way pay this freight?

Mr. Dickinson: I understand that that is the course of business as practiced at the terminal markets at Kansas City and Chicago. Whether there are any exceptions I am not informed. Now, as to the party to whom the money is remitted that is after this freight has been deducted from the selling price of the cattle. I have no advice on that at all" (p. 279).

"Commissioner Prouty: Well, it appears that in some cases, perhaps a good many cases, the owner was not the consignor. As I understand the matter Mr. Cowan has obtained the name of the owner from the books of the commission men. Is that right, Mr. Cowan?

Mr. Cowan: That is correct.

Commissioner Prouty: And it is probable that the name of the owner is correctly stated. The consignor might not be correctly stated because the name of the consignor might not agree with that of the owner. Mr. Wood, your line delivered some of these shipments, did they not" (R. 262)?

Mr. Wood: Yes, Your Honor. We were furnished with an exhibit purporting to show the movement of 4,607 cars. We have undertaken to check each one of the cars shown in this exhibit and have located a movement of all except 865 cars, and we have noted on each sheet by a check mark those cars where the movement was located, and by cross marks, those cars where the movement could not be located; and we have appended a little note to the exhibit that explains these markings, so that in the examination the exhibits may be entirely clear. I had assumed that in the making of this check the auditor had checked as against the names of the consignors shown as well as the movement of the cattle, and that where there was any discrepancy that he had noted that. But I have received a letter from him this morning, after these things had been delivered to me, stating that there were very many discrepancies between the name of the consignor as shown on this exhibit, and the name of the consignor as shown on the way bill, so that as checked these show that cars did move between these points and that the rate at the amount named in the exhibit was collected.

Commissioner Prouty: Suppose, Mr. Wood, that the books of the commission man showed that settlement with respect to these cars was made with the person who appears as the claimant, would you be disposed to deny that that tended to show that the claimant paid that freight?

Mr. Wood: I think that would be a question of law about which I would not like to make a definite an-

swer at the present time. My opinion would be this, that if, as Your Honor suggests, the books did show that beyond doubt, that the settlement of this identical car was made to the party named as claimant, of course that would be proof of that fact; but its legal effect might be another matter.

Commissioner Prouty: Will your auditor take a hold, with Mr. Cowan's representative, and endeavor to determine why it is that you are unable to locate these other 800 cars?

Mr. Wood: Yes, sir. I may say that without the receipt of further information, I think any further work upon the part of our auditing department would be fruitless.

"Commissioner Prouty: My information or understanding is that the information has in all cases been obtained from the commission men.

Mr. Cowan: I will ask Mr. Williams that. I think that is true. Possibly there are a few shipments where the information was otherwise obtained for these shipments since August, 1906. Can you state, Mr. Williams, whether the information was obtained in all cases from the commission company?

Mr. Williams: Not in all cases. I think in a few cases it was furnished by the party himself. For instance, you take Swift & Company and Morris & Company, they furnish us information as reliable as that by the commission companies, and a few of the larger shippers also furnish it.

Mr. Cowan: In the main, the source of information was the commission company's books?

Mr Williams: Yes.

Mr. Fletcher: I would like to make an additional observation, that I understand from Mr. Williams' statement that the person named as consignors on these slips were in most cases obtained from the books of the commission companies, and that they in most cases represent the true owner of the shipment. I also have in mind the statement made at the previous hearing and here, that in many cases these consignors who were named on the bill were not the real owners. We think in addition to the statement made by Mr. Wood about the auditor having expressed some doubt, whether the real consignor (453) was named, that shakes my confidence in the checking of these slips as to whether the consignor there named is the consignor shown in the billing, or whether it is the real owner.

Commissioner Prouty: Well, the name of the claimant has in all cases been taken from the books of the commission man as I understand Mr. Cowan.

Mr. Cowan: In all cases except the few instances like he mentioned, like Morris & Company and Swift & Company.

Commissioner Prouty: The name of the claimant shows the name of the person to whom the payment was made by the commission merchant; that is to say the owner of the cattle. Now, it appears in some cases, for matters of convenience, the owner was not also the consignor, but it would occur to me that the claimant is

probably correctly represented, although the consignor might not be (R. 264).

Mr. Fletcher: I wondered if there was any objection to our withholding the filing of that list until we could have that particular fact checked by the auditing department, as to whether the consignor named there is the consignor named in the billing or whether they just took it for granted that he was.

Commissioner Prouty: I suppose there is no objection to that.

Mr. Fletcher: They can be filed now if necessary, but I would like to have that fact ascertained by our line.

Commissioner Prouty: But that should be done right away.

Mr. Fletcher: Yes.

Commissioner Prouty: I suppose you have those way bills separated from the others in some file, so you can complete the check in a short time?

Mr. Fletcher: Yes" (R. 265).

"Mr. Cowan: I presume that the proof that would be made by Mr. Moore, if he were placed upon the stand, is practically waived. We have the books here.

Commissioner Prouty: We will see whether or not it is waived, but I do not understand they insist upon it now, or rather the suggestion I do not understand they insist upon it now, or rather the suggestion is that the examiner of the commission may examine these books.

Mr. Norton: He may be well able to do it then and report" (R. 268, 269).

"Mr. Cowan: The commission companies selling

livestock on the markets have furnished the Cattle Raisers' Association a list of the claims of their purchases?

Mr. Williams: They did, yes, sir.

Mr. Cowan: These claims were originally filed and are now on file with the Interstate Commerce Commission?

Mr. Williams: The tabulation is on file, yes, sir.

Mr. Cowan: You have retained duplicates in your office (454)?

Mr. Williams: Yes, sir.

Mr. Cowan: Those duplicates are correct according to the original claims filed with the Commission?

Mr. Williams: Yes, sir.

Mr. Cowan: They have been furnished to you through the regular course of business?

Mr. Williams: Yes, sir.

Mr. Cowan: The commission companies are the universal agents for the collection and payment of freight out of the proceeds of cattle shipped to them?

Mr. Williams: They are.

Mr. Cowan: They do not pay any regard to the man who is care taker of the live stock, but only make their entries in their books against the owners of the cattle?

Mr. Williams: Yes, sir.

Mr. Cowan: They render to the owners when they sell the cattle, an account sales?

Mr. Williams: Yes, sir.

Mr. Cowan: Press or other copies of which are re-

tained in their offices in Kansas City, St. Louis, Chicago, St. Joseph, New Orleans and other markets?

Mr. Williams: Yes, sir.

Mr. Cowan: From their books they have made out and furnished to you these lists of claims?

Mr. Williams: Yes, sir.

Mr. Cowan: Those lists show the date of the shipment, the owner, the amount of freight paid, and the railroad to which the freight was paid.

Mr. Williams: Yes, sir.

Commissioner Prouty: Do they show the point of origin?

Mr. Williams: They show the point of origin. In a few instances one or two of the commission companies failed to show originally the point of origin. We took that up with the commission companies and with the shippers and that was supplied later.

Commissioner Prouty: So that in all cases the point of origin appears?

Mr. Williams: The information is complete, yes, sir.

Mr. Cowan: You obtained from the Interstate Commerce Commission a list of the rates from every station in Texas, Oklahoma and New Mexico that is involved in these claims?

Mr. Williams: Yes, sir.

Mr. Cowan: That came from the traffic department of the Interstate Commerce Commission?

Mr. Williams: Yes, sir.

Mr. Cowan: Containing a large number of sheets, which showed the rate from every station.

(455) Mr. Williams: Yes, sir.

Mr. Cowan: The claims you have made up were made on the advances there were made in the rates in March, 1903, or during the year 1903?

Mr. Williams: During the year 1903, yes, sir.

Mr. Cowan: Which are the rates condemned by the Commission in its decision in the Cattle Raisers case?

Mr. Williams: That is my understanding.

Mr Cowan: You have not included interest?

Mr. Williams: No, sir.

Mr. Cowan: But you give the date of the shipment so that interest may be computed just as a mathematical computation?

Mr. Williams: Yes, sir.

Mr. Cowan: When we had the hearing here before, as you heard me say to the Commissioner, these claims, as you had made them out for each individual shipper, were submitted to the various railroads interested?

Mr. Williams: Yes, sir.

Mr. Cowan: After they had made a check of these claims they were returned to you?

Mr. Williams: They were.

Mr. Cowan: Have you made a tabulation of all the claims which the railroads themselves have admitted in their checking as being correct?

Mr. Williams: I have made a tabulation of all the

checkings reported back to me by the various railroads, yes, sir.

Mr. Cowan: Will you produce the tabulated alphabetical list of those claims?

(The list so offered and identified was received in evidence and thereupon marked 'Complainants' Exhibit No. A, received in evidence October 17, 1913, witness Williams,' and is attached hereto.)

Mr. Cowan: Take some one, no matter which one, and read it to the Commissioner.

Commissioner Prouty: Just let me see that list before he commences to read.

(Document handed to Commissioner.)

Mr. Cowan: For the purpose of the record, Mr. Williams, take some one illustrative case, and read what your tabulation shows, the head line and the indices, whatever you have there which shows what it means.

Mr. Williams: I have a claim here from Mrs. C. Adair. I find that on Exhibit No. 1, which was filed here last September, the Santa Fe Railroad had checked 135 cars, being their claim numbers three to six, and that the overcharge figured by them on the weights and the car numbers given, was $918.69. On the second exhibit, which was filed in January here, we had sixteen cars against the Santa Fe, their claim numbers one and two of that hearing, and the overcharges fixed by them were $110.16, making a total of the two exhibits, for the Santa Fe, of 151 cars, or $1,028.85 overcharge" (R. 273, 274, 275, 276).

Evidence as to the Assignments.

And the evidence as to the asignments was as follows (R. 294 to 301):

Mr. Cowan: We have the assignments of a large number of these claims, which assignments we will submit to the Commission. Mr. Williams' list contains an index figure or letter opposite those claims which have been assigned to Mr. Crowley when he was the secretary of the association, marked "C," and opposite the claims which were assigned to Mr. Spiller, who is the secretary and general manager now, you have the letter "S." Those claims not covered by assignments, however, and that have been practically considered by myself or my partner—he is a good lawyer—we think that the commission companies' demand on us that we file a claim for all their customers, whether they were members or not, was a sufficient authority for Mr. Crowley to proceed and Mr. Spiller to proceed as he has in filing claims where there is no formal assignment; and while it may be the order ought to be made in the name of the owner of the claim, we think the agency is sufficiently proven to entitle us to collect the claim.

Commissioner Prouty: If you want the order made in the name of anybody except the owner, you may make up your mind who, and for what reason; if you desire us to find that these claims have been assigned by some person and are owned by that person and prosecuted by him for his own benefit and not for the benefit of the original owner, it will be necessary to introduce some proof along that line.

Mr. Cowan: We have the assignments.

Commissioner Prouty: I do not think the mere filing of an assignment, unless the other side consented to it, without an opportunity to examine it, would be sufficient. It would be an item of proof, however.

Mr. Cowan: Perhaps I had better make that proof with Mr. Williams now in order to have it in the record. So if Your Honor will permit, I will stop at this point and do that.

Commissioner Prouty: You may do so.

Mr. Cowan: I will ask you, Mr. Williams, to state whether you have stated in the list you have made up, as has been mentioned by me, an indexed letter which shows the fact of the assignment of these claims?

Mr. Williams: I have, yes, sir.

Mr. Cowan: Have you set opposite each claim that has been assigned to Mr. H. E. Crowley when he was secretary and general manager of the association, the letter "C"?

Mr. Williams: I have.

Mr. Cowan: Have you set opposite each claim that has been assigned to Mr. E. B. Spiller, secretary and general manager, letter "S"?

Mr. Williams: Yes, sir.

Mr. Cowan: Do you know, as a matter of fact that written assignments have been made and filed with the Cattle Raisers' Association, and are in your office showing these assignments?

Mr. Williams: Yes, sir.

Mr. Cowan: Is it not a fact that Mr. Crowley,

when he retired or since he retired as secretary of the association, assigned over to Mr. Spiller all the claims which had been assigned to Mr. Crowley?

Mr. Williams: Yes, sir.

Mr. Cowan: That is a written assignment?

Mr. Williams: Yes, sir.

Mr. Cowan: These assignments were taken for nominal considerations, and because the Cattle Raisers' Association was prosecuting these cases and the secretary and general manager being one office, had charge of the whole matter?

Mr. Williams: Yes, sir.

Mr. Cowan: Is it not a fact also that in different meetings of the Cattle Raisers' Association from year to year, at their annual meeting and convention, that the report of the executive committee of the Association contained the reports of the attorney and secretaries and has shown the fact that these claims were prosecuted for the benefit of the owners of these claims?

Mr. Williams: Yes, sir.

Mr. Cowan: And that has been printed and widely circulated?

Mr. Williams: Yes, sir.

Mr. Cowan: And sent to every member of the Association?

Mr. Williams: Yes, sir.

Mr. Cowan: Is it not a fact that the commission companies demanded on the part of the secretary and general manager of the Association, that all claims of all their customers should be filed and prosecuted, as a

condition to furnishing even the claims for the members of the Association?

Mr. Williams: Yes, sir.

Mr. Cowan: All the claims which have been furnished by the commission companies are the claims originally filed and now with the Interstate Commerce Commission?

Mr. Williams: The tabulation of them with the Interstate Commerce Commission are shown there (indicating).

Mr. Cowan: Is it not a fact that the claims furnished by the commission companies made out on the blanks furnished by the Cattle Raisers' Association to the commission companies were sent to Washington and indexed and are there on file?

Mr. Williams: Copies of the tabulations are on file, yes, sir.

Mr. Cowan: I have before me a claim made by Frank Witherspoon. I would like you to state in the first place whether copies of that claim were filed with the Interstate Commerce Commission?

Mr. Williams: A tabulation of all the shipments shown hereon, with the exception of those from points where there was no increase in the rate, and possibly some of those went through by mistake originally and were filed with the Commission, and the tabulation shown in your docket there and given exhibit numbers.

Mr. Cowan: Just state what the original information is that is made up in that form?

Mr. Williams: The original information? Here is

the name of the commission company, the name of the owner or person who sold the cattle, and the place from which shipped, the place shipped to, date of shipment, number of cars, road over which shipped, the amount and rate of freight, and to whom consigned.

Mr. Cowan: I will state, if Your Honor please, for Your Honor's information, so it may be here in the record, as the record is very large, that within a year of the taking effect of the Act to Regulate Commerce as amended in 1906, we filed a claim preceding the date of filing, which to my recollection ran up to about the first of June, 1907. Subsequently those claims were filed with the Commission from time to time, including all of the data which Mr. Williams has mentioned, using the same blanks which the commission companies had used, and we copied them into those claims and they are set down in detail. There is an awful big lot of stuff weighing five or six hundred pounds. It was indexed and tabulated and intervening petitions were filed on behalf of each member of the Association and each claimant whose name appeared on the statement, and they are with the Commission, stored away there somewhere. They might be difficult to find, but they are there. Mr. John B. Daisch and C. A. Hamilton did a lot of preparatory work in filing these claims. So far as I know there has been nothing left undone which would show the original data furnished by the commission companies. Now, I want to ask Mr. Williams a question about that if I have not sufficiently done so already. The claims which you have

presented in the various tabulations you have made and furnished to the railroads, and have testified about, were all correct according to the information furnished you?

Mr. Williams: According to the information furnished to me they are.

Mr. Cowan: And that information comes from the commission companies?

Mr. Williams: Yes, sir.

Commissioner Prouty: Have you the assignments there? (Document handed to the Commissioner.) What do you say, Mr. Cowan, as to the right of the owner to ask for an order, after having made this assignment?

Mr. Cowan: I do not think the owner has the right, after having made the assignment, to ask for an order. After having made the assignment, I think the assignee has the right.

Commissioner Prouty: Do you know the signature of Mrs. Adair?

Mr. Williams: That is signed by her bookkeeper, Mr. Lichterwood. I know his signature.

Mr. Cowan: These assignments have not been filed with the Commission, but we will file them.

Mr. Humburg: Unless they are filed, we suggest that there might be put in the record here one of them so as to show just what the form is.

Commissioner Prouty: You might copy into the record that one of Mrs. Adair.

Mr. Cowan: Mr. Williams will you give the stenographer a copy of the assignment?

(Said document is in words and figures following, to-wit:)

"....., 1913.

In consideration of One Dollar to me in hand paid by H. E. Crowley, Secretary, as well as other considerations good and valuable to me, I hereby transfer and assign to him absolutely, any and all right of action, claims or demands which I now have or may hereafter have against each and every Railway Company over whose railroad I have shipped any cattle, for reparation or reimbursement on account of any excessive, unreasonable, discriminatory or otherwise unlawful or unjust freight rates or other charges which I have paid to such railway company on such shipments, as per schedule of said shipments hereto attached.

"Having assigned my said claim as aforesaid, I also delegate to said Crowley, Secretary, full authority in establishing said claim to collect data and evidence in relation thereto from all commission companies, persons or firms as if I were personally present and acting in the premises.

"Witness my signature hereto.

.....

Sign here.

.....

Postoffice address."

Commissioner Prouty: You let us know right away, Mr. Cowan, whether you want the order made, if one is made, in favor of the original owner, or in favor of the assignee.

Mr. Cowan: I want it in favor of the assignee in all cases where we have an assignment. We have considered the matter quite thoroughly and we think and I will brief that point and submit it to the Commission—that we are entitled to the order on behalf of the manager.

Commissioner Prouty: I do not care to have you brief it. You will have to assume the responsibility in making it. You have the thing all mixed up here so I would not have any idea what ought to be done, so you make up your mind what form you think the order ought to take, and we will put the order in that form.

Mr. Cowan: If your honor was going to stay on the commission, I might not remark that I do not think you ought to say we have the thing all mixed up; I think it is rather pertinent.

Commissioner Prouty: I hope it is as plain to my successor as it is to you.

Mr. Cowan: I will submit and be very glad to furnish counsel on the other side with conclusions on that subject. As I said, my partner is a very good lawyer, and when we can get together, which will be very shortly, I will get him to make up an opinion on this point.

Commissioner Prouty: Now, of course, there is no proof here that these assignments have been executed by the persons who purport to execute them, but I take it, gentlemen of the defense, it would not be your desire to put Mr. Cowan to the necessity of making proof in each individual case. There is no doubt about it, I

suppose, and we will find, unless there is some objection, that this assignment was regularly made by the person purporting to execute it.

Mr. Cowan: I will just ask Mr. Williams now if it is not a fact that the Cattle Raisers' Association, through its secretary and general manager, sent these assignments through the mails to the parties who were the owners of the claims shown in the list submitted, and requested them to sign the assignment and send it back to the Cattle Raisers' Association?

Mr. Williams: By the person in authority to do so, yes, sir.

Mr. Cowan: Take the case of Mrs. Adair. She lives in England?

Mr. Williams: Yes, sir.

Mr. Cowan: And the man who manages her ranch manages her entire affairs and is recognized as her agent for everything?

Mr. Williams: Yes, sir.

Mr. Cowan: When cattle are shipped for Mrs. Adair—

Commissioner Prouty: I don't think you need go into that; unless there is some objection we will find the fact of the assignment according to the language of the assignment itself in all these cases in which an assignment has been made, and you indicate in whose favor the order should be made in all cases.

Now, is there anything more to be said about this case, gentlemen, today?

Mr. Dickinson: I beg to suggest that it may be

true, as far as my knowledge goes, that there is a universal custom of the commission houses to deduct freight charges from the invoice and remit the balance to the consignor; but I do not feel at liberty to admit the sufficiency or the competency of the proof that has so far been offered to sustain that proposition in this case?

Mr. Cowan: How should I be able to prove it if it is a fact? Do you want somebody from a commission house who is thoroughly familiar with it?

Mr. Dickinson: Of course, I am not making the proof. I do not think it would be right for me to sit here silently and by my silence admit that you have proved that fact, so far as you have proceeded in this case.

Mr. Cowan: If there is a question about that, I see Mr. Clifford Thorne, who is the chairman of the Iowa Commission, here, and who I think is thoroughly familiar with live stock transactions in this country.

Commissioner Prouty: I do not believe, Mr. Cowan, that would be altogether competent proof. I rather think you have shown it already; but the testimony of one man in one section of the country that a certain thing was done in Iowa would hardly show that it was done in Texas.

Mr. Cowan: No; but I think Mr. Thorne is familiar with Chicago, St. Louis, Kansas City, St. Joseph and these other points.

Commissioner Prouty: My impression is that it appears the owner made a shipment of live stock to a commission merchant and the freight was paid and the

cattle sold by the commission merchant. Did not one of these commission merchants appear here?

Mr. Williams: We brought one here, but they would not let him go on the stand.

Commissioner Prouty: We will look over the record in that respect, but my impression is the commission will find from the present record that the owner paid the freight. He sent the cattle to market, sent them to a commission man, and in the ordinary course of business he paid the freight.

Mr. Dickinson: That may be the usual custom, Your Honor, I am not disputing it, but—

Commissioner Prouty: You need not introduce any testimony on that, Mr. Cowan.

Mr. Dickinson: I merely desire to have the record show in this case an objection to the sufficiency and competency of the testimony offered.

Mr. Cowan: Do you mean the competency of the testimony to show that the commission company is the agent of the shipper for the sale of the cattle and the paying of the freight and collecting the over charges?

Commissioner Prouty: I understand the commission must find the owner of the cattle himself paid the freight either himself or through some agent; and Mr. Dickinson objects that there is not sufficient proof as to that.

Mr. Cowan: I do not understand Mr. Dickinson that way. I understood Mr. Dickinson to mean that there is no sufficient evidence to prove that the commis-

sion man is the agent to collect and pay back over charges.

Mr. Dickinson: No, the commissioner has my view.

Commissioner Prouty: What bearing has it in this case whether the commission man is the agent to collect and pay back over charges?

Mr. Cowan: The only bearing that has is when we come to make proof as to the balance of this case—

Commissioner Prouty: Oh, we will talk about that when we get to it. It is not of importance here because these shipments are admitted.

Mr. Cowan: I suggest, however, that it will become important, and I wish to emphasize the idea that not every man who is embraced in these claims is the same shipper who shipped under claims that have not been admitted. Many shippers are not embraced in these claims at all, but they paid the freight just the same, and the railroads have not admitted that they can trace the shipments, and that I want to prove in justice to them.

Commissioner Prouty: You desire us, of course, to find that Mrs. Adair shipped 135 cars, paid the freight and made the assignment?

Mr. Cowan: Yes.

Commissioner Prouty: And that some other person shipped a certain number of cars, paid the freight and made the assignment? In other words, you want a finding as to the transaction of each individual, showing the assignment by that individual to Mr. Crowley or Mr. Spiller?

Mr. Cowan: Yes; but I do not want to bar these people who are just as much entitled to collect as the people who are here in these admitted claims. For that reason we want to make the proof in the balance of the case.

Mr. Humburg: May I ask Mr. Williams a question, Your Honor?

Commissioner Prouty: Yes.

Mr. Humburg: Mr. Willams, those assignments are of three different kinds, as I understand; first, an assignment from the proposed consignor to the general manager and secretary of your association, is that true?

Commissioner Prouty: They are to some individual.

Mr. Williams: There are two individuals there, the general manager and the secretary, but the assignment form is the same.

Mr. Humburg: It is the same from the supposed consignor to the secretary of the association?

Mr. Williams: Yes.

Mr. Humburg: The same in form?

Mr. Williams: Yes.

Mr. Humburg: Now, that secretary, I understood you to say, made an assignment to another secretary, is that true?

Mr. Williams: The first one did; yes, sir.

Mr. Humburg: Can you furnish for the record a copy of that second assignment?

Mr. Williams: I have the original here.

Mr. Cowan: We will furnish that.

Mr. Humburg: Is the form the same—well, it will be furnished? Now, as to the dates of those several assignments, when were the claims originally assigned?

Mr. Williams: Well, these forms are dated all along. Some of them bear only recent dates, some of them are dated back from the time of Mr. Crowley, as general manager. There has been no need of any rush, we thought, in securing the assignments, as our authority to file them has been acknowledged by the parties interested. It was only a matter of form, these assignments, and it was recognized that they would give them to us when they were wanted.

Mr. Humburg: That is all."

The assignment of errors filed at the time of the suing out of the writ of error from this court is set out in full at pages 455 *et seq.* of the Record, but the same will be re-stated, so far as relied upon, under the next heading.

ASSIGNMENT OF ERRORS.

I.

The court erred in holding that there was no proof before the Commission of who owned the live stock shipped and who paid the excessive freight and consequently who was damaged thereby and therefore that the order of reparation made by the Interstate Commerce Commission in favor of this defendant in error was unsupported by the evidence and was void.

II.

The court erred in holding that there was not sufficient evidence to support the findings of the Commission that the claims upon which the order of reparation was based had been properly, legally and duly assigned to your petitioner.

III.

The court erred in holding that conceding there was sufficient evidence to show and prove the assignment of the claims upon which the order of the Interstate Commerce Commission for reparation was based, yet that the evidence showed that the purpose of the assignment was not such as to vest the legal title to the claims in the defendant in error so as to authorize the Interstate Commerce Commission to make the award of damages to him, and that therefore the order of reparation was void.

IV.

The court erred in holding that in the proceedings before the Interstate Commerce Commission counsel were not required to present objections to the inadmissible testimony with the same nicety as in actions in court, and that inadmissible or objectionable testimony, although not objected to when offered before the Commission and although received by said Commission in evidence, should not be considered by the court in support of the Commission's order.

V.

That in an action on a reparation order of the Interstate Commerce Commission made in favor of shippers, based on the exaction of unreasonable rates, which had been held by the Commission to be unreasonable, the question whether the rate exacted was unjust and unreasonable or not is open to determination by the court or jury, contrary to the decisions of this court in *Texas & Pacific R. R. Co.* v. *Abilene Oil Co.*, 204 U. S. 426; *Interstate Commerce Commission* v. *C., R. I. & P. R. R.*, 218 U. S., 40, and other cases.

VI.

The court erred in holding that where a rate subsequently condemned by the Interstate Commerce Commission as unreasonable was when exacted a legal rate, that the shipper could not sue in a court of law and recover back any portion of such rate.

VII.

The court erred in holding that in fixing the rate for a period of two years in the future and allowing reparation for the exaction of the unreasonable rate during a period of two years prior to the time of the

order fixing the rate for the future, the Interstate Commerce Commission in effect established the rate for a longer period than authorized by law, therefore the order of reparation was improper and that the shipper could not recover the difference between the rate paid and the rate found to be reasonable at the time of such payment.

VIII.

That the court erred in holding that the court has the power to set aside an order of reparation made by the Interstate Commerce Commission in a collateral proceeding to which the Interstate Commerce Commission is not a party based upon such order to recover reparation.

IX.

That the court erred in holding that where the carriers did not, under Sec. 16-a of the Act to Regulate Commerce, apply to the Interstate Commerce Commission for a rehearing, they were not thereby precluded in a collateral proceeding based upon the findings and order of the Commission for reparation from claiming such findings and order of the Commission were invalid because not supported by sufficient evidence.

X.

The court erred in holding that sufficiency of the proof and validity of the assignments to petitioners could be passed upon by the appellate court, although no such objections were presented to the Commission and no objections made upon that ground.

XI.

The court erred in holding that conceding there was sufficient evidence to prove the assignment of the claims to the defendant in error, that the purpose of the assignments was not such as to vest the legal title in defendant in error so as to authorize the Commission to make the award of damages to him, although such claim was not presented to the Interstate Commerce Commission when said order was made and no objection of any kind was made at the hearing before the Commission based upon that ground.

XII.

The decision of the court is in conflict with the decisions of the United States Supreme Court in:

L. & N. R. R. Co. v. *Finn*, 235 U. S. 605.
Texas & Pacific R. R. Co. v. *Abilene Oil Co.*, 204 U. S. 426.
I. C. C. v. *C., R. I. & P. R. R. Co.*, 218 U. S. 210.
Mitchell Coal & Coke Co. v. *Pa. R. R. Co.*, 230 U. S. 247.
I. C. C. v. *L. & N. R. R. Co.*, 227 U. S. 88.
U. S. v. *L. & N. R. R. Co.*, 235 U. S. 314.
Eastern Texas R. R. Co. v. *R. R. Commission of Texas*, 243 Fed. 300, 305.
Same case, 247 U. S. 214.

XIII.

The court erred in reversing the case and remanding the same for new trial. The judgment of the lower court should have been affirmed.

BRIEF OF THE ARGUMENT.

I.

Jurisdiction.

If the judgment of the court of appeals in holding that the purpose of the assignments was such that the legal title was not vested in Spiller so as to authorize the Commission to make the order of reparation to him, then the judgment of that court is final and the case is properly here on writ of error. But in case of doubt on that proposition the plaintiff in error also applied in due time for the writ of *certiorari*, which was duly submitted to this court and passed to await the hearing on the merits. The case is under Sec. 16 of the Interstate Commerce Act which this court in *Southern Pacific Co.* v. *Darnell, Taenzer Lumber Co.*, 245 U. S. 531, 535, said:

> "We are inclined to take the course followed *sub silentio* in *Mills* v. *Lehigh Valley R. R. Co.*, and to treat cases brought under Sec. 16 of the Act to Regulate Commerce, which authorizes the joinder of all plaintiffs and all defendants as standing on a peculiar ground."

II.

There was sufficient evidence before the Commission to show who owned the live stock shipped, who paid the excessive freight, and who was thereby damaged.

a. The Commission is an investigating body and not bound by the strict rules of evidence.

I. C. C. v. *Baird*, 194 U. S. 44.
I. C. C. v. *L. & N. R. R.*, 227 U. S. 93.
L. & N. R. v. *Finn*, 235 U. S. 601.
I. C. C. v. *C. R. I. & P.*, 218 U. S. 110.

Therefore, statement of counsel, hearsay evidence not objected to, proof of general course of business and custom, are admissible and should be considered. The record discloses an acquiescence on the part of respondents in the suggested abridgment of the formal proof. As stated by the learned District Judge Van Valkenburgh, before whom the case was tried below:

> "Such things are common in courts of law, in the interest of economy of time and labor, and still more so in more informal proceedings before commissions. It is true that at the end of the hearing defendants interposed objections as to the sufficiency of the proof, but after such an attitude assumed in the course of the trial, courts generally would not entertain such an objection as reaching an offer of his kind proposed for convenience, and acquiesced in by counsel at the earlier stage of the proceedings."
>
> "The commissioner, himself a trained lawyer, after reviewing the record as made, was of opinion that the evidence sustained the finding he made; and after a very careful examination and

that deliberate consideration, made necessary by the earnest insistence of counsel, I am constrained to agree with the commissioner."

"It was stated by counsel for plaintiffs in his opening, and his statements were confirmed by Mr. Williams, the assistant secretary of the Cattle Raisers' Association, that these statements of the shippers and the real owners were procured and made up from the books and records of the commission men, at point of destination, to whom the shipments were made. These commission companies sell the cattle and make up an account of sales, so-called, transmitting to the shipper, the owner, the proceeds, after deducting out of the proceeds the amount of freight, feed charges and other charges of that character. These commission companies make their settlement with the real owners, or parties in interest, irrespective of the caretaker or other person in whose name the shipment may nominally be made; such are the ones whose name appear in the statements offered, and from whom the assignments were procured. These assignments, as shown by the sample, are absolute on their faces and import a valuable consideration. A careful reading of the record discloses that plaintiffs offered to prove this general situation by a witness, or witnesses, from among the commission men, but the commissioner, deeming the matter already to have been sufficiently shown, for the purpose of a *prima facie* case, declared further proof to be unnecessary. Nothing to the contrary was shown, nor offered to be shown, by the defense. On the contrary, the entire record discloses an acquiescence on the part of the defense upon this assorted course of business dealing, as well as, in some cases, statements amounting to admissions. The following, among others, will serve as an illustration:

"Mr. Cowan: Now, I ask the attorneys of the railroads, as they probably now know, whether it is the fact that in all cases the freight was paid by the commission company and deducted out of the account sales of the cattle, as I have stated. I presume all you gentlemen know that to be the case. Is that right, Mr. Wood?

Mr. Wood: I do not know anything about it, except what you say about it, Judge.

Mr. Cowan: I would like to call Mr. Moore, who has spent many years in the commission business. He has kept the books of this firm of Evans, Snider & Buel, and he has the books here, so as to explain for the purpose of the record and for the information of the Commission just what the course of proceeding is.

Mr. Norton: I think that was stated in the other hearing. I think our own live stock man stated that?

Mr. Cowan: I think he did.

Mr. Norton: We are anxious to get to another meeting, and you can put that in, if necessary, later."

"It is true that there was much talk of having the books and bookkeepers of the various commission companies examined and reported on by an examiner to be appointed by the Commission. It is true that the defendants insisted that this would be the best evidence, at least evidentiary in its character, but the Commissioner felt that upon the entire record the situation appeared in the absence of rebuttal, and so I think it did for the purpose of a hearing of this nature."

B. A careful reading and consideration of the evidence before the Commission shows, in our opinion, there was evidence to support the findings, in that:

(1) All the shipments were made to commission houses for sale on the market *for the owners.*

(2) That the commission houses paid the freight, deducted it from the proceeds of sale and remitted to the owner the balance of the proceeds of sale.

(3) That the books of the commission houses showed the names of *the actual owners* of the cattle, and not the caretakers.

(4) That the commission companies furnished to the Cattle Raisers' Association, slips, showing only the names *of the owners*, the number of cars, the date of delivery of shipment, the point of origin, weights, delivering carriers and freight paid.

(5) That S. H. Cowan, attorney for the claimants, knew the custom of the commission companies and stated it as a fact, and that the commission companies had furnished such statements.

(6) That Mr. Williams, assistant secretary of the Cattle Raisers' Association, a witness before the Commission, heard Mr. Cowan's statement, and testified under oath that it was true; that Mr. Williams knew of his own knowledge such custom of the commission houses and testified to it; that Mr. Williams had examined many accounts of sales, and that he had examined the books of some of the commission houses and knew that

it was the universal custom of the commission houses to enter upon their books the names of the owners of the cattle shipped to them, to pay the freight out of the proceeds of sale and remit to the owners the balance of the proceeds, and that the commission companies paid no attention to the names of the caretakers in whose names the cattle may have been shipped.

(7) That Mr. Brooks, live stock agent of the Santa Fe Railway Company, knew such custom and so stated it to the Commission, as follows:

> "Mr. Cowan: Now, Mr. Brooks, your bills will show the name of the caretaker?
> Mr. Brooks: Yes.
> Mr. Cowan: Your bills do not show the name of the owner?
> Mr. Brooks: No.
> Mr. Cowan: *The commission company's books, however, do show the name of the owner?*
> Mr. Brooks: Yes."

(8) Mr. Norton, attorney for the Santa Fe, at the second hearing before the Commission, when Mr. Cowan offered to call Mr. Moore, bookkeeper for Evans-Snider-Buell Company, a commission company doing a large business, and who had the books of that company present in order to prove the custom and course of procedure, said:

> "I think that was stated in the other hearing, I think our own live stock agent stated that.
> "Mr. Cowan: I think he did."

(9) That the list of the claims purporting to show the names of all the owners were furnished to carriers

who checked the same; that such list was filed with the Commission, showing the cars and shipments checked by each carrier as having moved as stated in said claims, and the amount of the excessive freight paid, as stated; that Mr. Fletcher, one of the counsel for the carriers, requested that filing of the list be withheld temporarily for the purpose of allowing the carriers to check the names of the owners as shown on the list, with the consignors as shown by the carrier's books, which was done (R. 264). That Mr. Norton, counsel for the Santa Fe, did the same thing (R. 268). That in nearly all other instances the carriers checked the name of the consignor and consignee as shown on the slips furnished by the Cattle Raisers' Association to said carriers, and that the names given as consignor and as owners and shippers corresponded with the names shown on the records of the carriers. That no claims were allowed except those checked by the carriers.

(10) That it was repeated over and over again before the Commission, by the Commissioner, by counsel for claimant, and by the witness Williams, as to what was the custom and course of procedure of the commission companies; that the commission companies paid no attention to the names of the caretakers who might accompany the cattle to market and in whose name some of the shipments were made; that the account books of the commission companies were kept in the names of the owners only; that the names of the owners were furnished to the Cattle Raisers' Association, who filed the claims; that in

the lists of names no names except the actual owners were shown; that the freight was paid by the commission companies and deducted from the proceeds of sale and the balance remitted to the owners; that as a rule the owners did not keep books or records of their shipments, but depended upon the books of the commission company, to whom they referred the Association for proof and details of each shipment; that the claimants offered to produce the books of the commission companies, or have an examiner of the company examine them; that some of the books were brought before the Commission; that the carriers admitted they were evidence of what they purported to show; that the reason the books were not examined was because the carriers checked the claims with their own books and admitted the movement of the freight as stated, and the Commission understood from the admissions made that the only question left open was whether the shippers were damaged; that the Commission was of the opinion and so found that payment of the excessive rate imported damage, and that the measure of damages was the difference in the rate condemned as unreasonable and the rate found to be reasonable at the time of the shipment. Counsel for the carriers admitted the course of business of the commission houses was as stated (R. 259), as follows:

> "Commissioner Prouty: Assuming that you do locate a particular shipment so you are satisfied that the shipment moved and the freight money was paid by somebody, do you intend to question the fact that the money was paid by the consignor ulti-

mately? I understand the course of business to be that these cattle are sold on the market by some commission men, and the freight money is paid by the commission man and deducted from the amount received from the sale of the cattle and the balance remitted to the owner, which of course amounts to a payment by the owner. Do you make any question that the consignor did in that way pay the freight?

Mr. Dickinson, Attorney for the Rock Island: I understand that that is the course of business as practiced at the terminal markets at Kansas City and Chicago. Whether there are any exceptions, I am not informed. Now, as to the party to whom the money is remitted, that is, after this freight has been deducted from the selling price of the cattle, I have no advice on that at all."

(11) That the sheets or information furnished the carriers upon which their admissions were based, and their check for the same, were as follows:

J. A. Patterson, Claimant.
347 Estelline, Tex.
In Account With
Atchison, Topeka & Santa Fe Ry. Co., Delivering Line.

Consignor.	Consignee.	Originating Road.	Point of Origin.			Destination.		
						(In pencil) St. Joseph, Mo.		
J. A. Patterson,	T. T. Ft. W. & D. Ry.,	Estelline, Tex.				4 July 22, 190		
(In pencil)	7-20-08	W. B. 97	car No.	S. W.	3585	Wt. 22,000.	frt.	7
	" "	" 98	" "	C. & S.	11074	" 22,000	"	7
	" "	" 99	" "	"	1598	" 22,200	"	7
	" "	" 100	" "	" D. C.	1063	" 22,000	"	7
	" "	" 101	" "	C. B. Q.	62375	" 22,200	"	7
						110,400		
						3		
						33,12⅔		

That part in parenthesis was put on the sheet by the Santa Fe in checking and at
and that the amount collected on those five cars was in fact twelve cents more
company admitted the movement of those cars as stated.

That the name of the claimant was put at the top, and under the title "Consignor" was put the name of the claimant, if he was the consignor; if he was not, and the cattle were shipped in the name of the caretaker, the name of the caretaker was put in each case, as far as the plaintiff in error was able to ascertain the fact. That the checking by the carriers as shown in this single sheet, showed the movement of the cars therein reported, and at the time stated, and the payment of the freight, as stated, and in this case showed the payment of more than the amount claimed, by twelve cents. That the reason the railroad companies could not check all of the cars claimed to have been shipped, was because the name of the consignor as given on the sheets did not correspond with the name of the consignor on the records of the railway companies. That, as shown by the record, was caused by the fact that the cars may have been shipped in the name of the caretakers. In all cases where the railroads did not check the shipment, those shipments were eliminated and not allowed by the Commission. While the Santa Fe, and some other carriers, in making their returns on the slips, stated they did not check the name of the consignor, yet it will appear that Mr. Fletcher asked to withdraw the list for that purpose (R. 264), and Mr. Norton for the Santa Fe did likewise (R. 268), and presumably that checking was made.

It is true that at the end of the second hearing (R. 269), the Commissioner said that as soon as the checking of the railroads had been finished that the Commission should be notified and it would have an examiner go

and make an examination for the purpose of stating the accounts and to examine the commission merchants' books; but at the third hearing, after the checking had been completed and return thereof made to Mr. Williams, the assistant secretary, by the railway companies, the Commissioner, speaking to the attorney for the Santa Fe, said (R. 281):

> "Do you make any question on the part of the Santa Fe in case the Commission finds these cars were shipped by the persons who made the claims, who appeared on the waybills as the owners, and the freight was paid by that person—do you make any objection to the issuing of an order of reparation at this time with respect to those claims?
>
> Mr. Andrews: We do on the ground that they have not shown damage.
>
> Commissioner Prouty: Yes, I understand that that ground is always raised. They have shown damage to this extent, that they paid a higher rate than the Commission found reasonable. It is a legal question as to whether that is damage.
>
> Mr. Andrews: Yes, but we do not admit that these claimants are entitled to or paid the freight.
>
> Commissioner Prouty: I am asking you in case the Commission finds that fact, do you make any objection to an order for reparation?
>
> Mr. Andrews: Excepting that we do not admit that they have suffered damage.
>
> Commissioner Prouty: To make my question more specific; here are 173 cars claimed by Mrs. Adair. You admit the movement of 135. Do you object to the issuing of an order with respect to those 135 cars before the question as to the remaining cars is determined?
>
> Mr. Andrews: We object to it on the ground that the claimants have not shown that they were damaged."

At p. 292, the Commissioner said:

> "I might say that if Mr. Williams can attend to this, I will ask our examiner to sit down with him immediately, just as soon as he comes to Washington, and go through these checks of the railroad and see what are admitted, so we can make up a statement based on that admission."

So far as appears in the record, that was done. As a sample of the admissions made by the railroads in their checking up of the claims, we beg to quote from the record as follows (p. 276, *et seq.*):

> "Mr. Williams: I have a claim here for Mrs. C. Adair. I find that on exhibit No. 1, which was filed here last September, the Santa Fe Railroad had checked 135 cars, being their claim numbers three to six, and that the overcharge figured by them on the weights and the car numbers given, was $918.69.
>
> On the second exhibit, which was filed in January here, we had sixteen cars against the Santa Fe, their claim numbers one and two of that hearing, and the overcharges fixed by them were $110.16, making a total of the two exhibits, for the Santa Fe, of 151 cars, or $1028.85 overcharge.
>
> Commissioner Prouty: What I want to do is to see exactly what has been done by the Commission and by the Santa Fe in checking those claims. I want you in the first place to let me know what you filed with the Commission, if you have it; I want to know in the next place, what you gave the Santa Fe, and I want to see then what the Santa Fe did with the claim filed with it.
>
> Mr. Williams: I find that on the first filing we filed for Mrs. Adair 173 cars, amounting to $1141.80. Of course that first filing they checked 135 cars.

Commissioner Prouty: Just a minute now; you file with the Commission now a claim for 135 cars.

Mr. Williams: Yes.

Commissioner Prouty: In how great detail was that claim filed?

Mr. Williams: I will get that so as to show you exactly. Here is a copy that was filed with the Santa Fe showing the totals and showing also their checking and what they supplied. We filed a copy of this with the Commission.

Mr. Cowan: But that is in addition with the original filing with the Commission?

Mr. Williams: We filed a tabulated statement with the Commission.

Commissioner Prouty: You filed originally a tabulated statement with the Commission showing that 173 cars were shipped by Mrs. Adair?

Mr. Williams: Yes, sir.

Commissioner Prouty: Now, then, what did you serve on the Santa Fe?

Mr. Williams: This right here (indicating).

Commissioner Prouty: Where are the 173 cars? Is this the list of the 173 cars?

Mr. Williams: Here it is right here. These sheets cover the entire bunch. Part of those were made in Kansas City and St. Joseph—

Commissioner Prouty: Speak a little louder so that the stenographer can hear you. You say that these papers which I am looking at were the papers served on the Santa Fe?

Mr. Williams: At the first hearing here, yes, sir.

Commissioner Prouty: Were they the papers from which the Santa Fe made their checking?

Mr. Williams: Yes, sir.

Commissioner Prouty: You say that the Santa Fe admitted the movement, or admitted 135 of these cars; what do you mean by admitted 135 of these cars?

Mr. Williams: I mean by that that they furnished us according to their own records, waybill references, car numbers, weights, and so forth, on 135 cars which they considered to be the cars covered by those statements.

Commissioner Prouty: What part of these papers were furnished to you by the Santa Fe?

Mr. Williams: These slips, here (indicating).

Commissioner Prouty: The slips in typewriting here?

Mr. Williams: The slips on which the waybill of references, car numbers, and so forth, appeared.

Commissioner Prouty: Now, the first item on the first one of these sheets is headed 'way bill,' the date is '9/8/8.' What does that mean as you understand it?

Mr. Williams: September 8, 1908.

Commissioner Prouty: And the number of the way bill is what?

Mr. Williams: 1335.

Commissioner Prouty: And the initial of the cars?

Mr. Williams: A. T.

Commissioner Prouty: That is an Atchison car?

Mr. Williams: Yes.

Commissioner Prouty: And the number?

Mr. Williams: 51,282.

Commissioner Prouty: And from what point?

Mr. Williams: From Hagan, Texas.

Commissioner Prouty: And to what point?

Mr. Williams: Kansas City.

Commissioner Prouty: And the weight was how much?

Mr. Williams: 20900 pounds.

Commissioner Prouty: And the freight paid, how much?

Mr. Williams: $61.65.

Commissioner Prouty: And what would be the overcharge on that item?

Mr. Williams: It would be three cents a hundred.

Commissioner Prouty: Three cents a hundred pounds?

Mr. Williams: Yes.

Commissioner Prouty: That is the information which was furnished you by the Santa Fe?

Mr. Williams: By the Santa Fe, yes, sir.

Commissioner Prouty: And the Santa Fe has furnished you that information as to 135 cars of the 173 cars which you claim were shipped by Mrs. Adair?

Mr. Williams: By Mrs. Adair, yes, sir.

Commissioner Prouty: Are all of the checkings of the Santa Fe made out in that same way?

Mr. Williams: They are all on the same order, yes, sir; with the Santa Fe.

Commissioner Prouty: So that the items put down in your tabulation as against the Santa Fe are all admitted by the Santa Fe in the same detail as these items are?

Mr. Williams: In this detail, yes, sir. My items shown on there are taken from their checking, given their same claim numbers and figures."

With reference to the Rock Island Railroad (R. 282):

"Commissioner Prouty: Mr. Dickinson, do you understand that all those cars in the list sent you, excepting those specified, were found and found to be correct?

Mr. Dickinson: In most of the cases, yes, sir, and substantially correct. They did not check in all the details.

Mr. Dickinson: Our auditor was satisfied that they must be the same cars as submitted in the list

by the complainant. Now, as to those which we could not locate, I had the auditor compile a list, and I furnished the gentlemen here with that list.

Commissioner Prouty: Then it would be correct if we took the entire list served upon you and subtracted from it the list furnished Mr. Williams, and treated the balance as located as correct?

Mr. Dickinson: I so understand it, Mr. Commissioner, with the exception that our records, and of course we are limited to those, do not in all cases check precisely with the statement submitted by the complainant. For example, the list submitted to us may indicate consignee L. or X. That, I understand, is the designation for some commission house at point of destination. While the list may show L, perhaps our records show some other letter. But nevertheless, we thought that must be the same car referred to in the statement."

With reference to the Missouri Pacific and St. Louis, Iron Mountain & Southern Railroads, the Commissioner stated (R. 283):

"Commissioner Prouty: Is the Missouri Pacific represented?

Mr. Wright: Yes.

Commissioner Prouty: Mr. Wright, do you understand that Mr. Williams' statement is correct and that your company has located these cars?

Mr. Wright: I think it is substantially correct. As I recall it, on the first lot furnished, we found all six cars. That is, we found them in this way; certain cars had moved from the points of origin to the points of destination shown, and our auditor believed that those were the cars set out in this claim, although he was not positive in every case.

As to the second lot, I do not recall just how that did come out, but the third lot I have here with me, which has not been returned to Mr. Williams

yet. It covers four cars. There is a mistake in this. The amount is a small one, $26.40, but it is $8.40 more than is charged on the cars. Mr. Williams can see that. He has the wrong weight for fare charged on the shipment."

Referring to the "Katy" the record shows (p. 284):

"Mr. Williams: Take the Katy, for instance; they have opposite the name of the consignee a red check mark there. I take it for granted naturally that that means that that claim has been checked.

Commissioner Prouty: Here is an O. K.; whose is that?

Mr. Williams: That is their O. K., it is not mine. Then, on the statements in which they were not able to locate certain shipments, they made an explanation such as 'Am unable to locate billing for 74 cars covered by sheets 3, 4, 5, 6 and 7,' and that statement is signed by J. E. Myers. I suppose he is their auditor, or some authorized man at any rate. On the claims that show no such comment as that, we naturally conclude that they have been checked and have been found to be correct.

Commissioner Prouty: Was any list furnished to you by the Katy as to the number of cars checked and found to be correct?

Mr. Williams: I don't remember as to that. I have applied to Mr. Burg—in some instances I was unable to identify the particular cars that they had not checked, and I applied to Mr. Burg, then, for further information, and he furnished me such references as enabled me to check the most of those. One or two of them were still in doubt in my mind and where there was any doubt I left it in their favor.

Commissioner Prouty: The Katy is represented here to-day?

Mr. Burg: Yes, sir.

Commissioner Prouty: Do you understand that Mr. Williams' statement is correct, Mr. Burg?

Mr. Burg: Substantially correct, Mr. Commissioner. Of course we only checked those statements with reference to the movement of the cars; we did not check the freight rates.

Commissioner Prouty: You say you did not check the freight rates?

Mr. Burg: No, we did not check the freight rates.

Commissioner Prouty: Did you check the amount paid?

Mr. Burg: I think not. Our checking only went to the extent of checking the movements.

Commissioner Prouty: Did you check the name of the consignor and consignee on the way bill?

Mr. Burg: Yes, sir; and I think that in almost every instance they tallied. Of course the billing shows the names.

Commissioner Prouty: I understand, Mr. Williams, that you have applied in all cases the published rate as published by the Interstate Commerce Commission?

Mr. Williams: Yes, sir.

Commissioner Prouty: The presumption would be, I suppose, Mr. Burg, that your company collected the published rate, whatever it was?

Mr. Burg: Naturally.

Commissioner Prouty: You make no question that you collected anything other than the published rate in any case?

Mr. Burg: No, sir."

The witness then identified the lists as returned to him by the other carriers, some of whom were not present at the third hearing. The above is a sample of the admissions and checks by the different carriers. We deem it unnecessary to report all of the record on that point.

No objection was made at the hearing before the Commission as to the testimony being hearsay or incompetent for that reason, but the objection at the close was only to the effect that there was a failure of proof, that the testimony was not sufficient.

Does not the Circuit Court of Appeals ignore that part of the Commerce Act, Sec. 13, which empowers "the Commission to investigate the matters complained of, *in such manner and by such means as it shall deem proper.*" And Section 17: "That the Commission may conduct its proceedings in such manner as will best conduce to the proper discussion of business and the ends of justice." And is not the decision in conflict with the decision of this court in *L. & N. R. R.* v. *Finn*, 235 U. S. 606, 608?

In the Finn case this court construed the statement of a Mr. Goodwyn, *though not under oath*, and also a colloquy between counsel, which, coupled with the answer of the carrier, this court held "in effect conceded that the particular amounts claimed were proper to be awarded as reparation." The Finn case is a precedent for asserting that in proceedings before the commission statements of counsel and other parties, though not under oath, are receivable as evidence, and considered in determining whether there is any evidence to support the findings of the commission. This court has held that the Interstate Commerce Commission "is not limited by the strict rules as to admissibility of evidence which prevail in suits between private parties." *I. C. C.* v. *L. & N. R. R.*, 227 U. S. 93.

What the pleadings were in the proceedings before the commission in the case at bar does not appear. For aught we know, the railroads may have denied liability on the same grounds as the defendant did in the Finn case. We do know they conceded the shipments were made and the freight at the rate deemed unreasonable was collected. We do know that some of the carriers conceded the names of the consignor and consignee given on the list furnished by the claimants agreed with their own records. The M. K. & T. did (R. 285); the C. & A. did (R. 286); the Chicago & Eastern Illinois did (R. 287); the Illinios Central did (R. 287); the Rock Island did (R. 282); the Mo. P. and St. L. I. M. & S. did (R. 283); the Frisco did not, but conceded that if the books of the commission companies showed the names of the owners identified with the shipment that would be evidence who paid the freight (R. 262). The Santa Fe retained the list for the purpose of checking over the names of the consignor and consignee, and for all that appears, it also did. And we do know that the claimants named only the owners on those lists. We do know that the Santa Fe's own live stock agent admitted the custom of the commission companies was to show on their books the names of the owners of the cattle shipped and sold. We know the defendants made no objection to the character of the proof offered when offered. We do know that under the law applicable to the Interstate Commerce Commission, its proceedings are conducted in an informal manner. We do know, as stated in the Finn case, "full opportunity was afforded

to the railroad company to adduce such evidence as it desired." "There is nothing to show that it has or could have any defense to the payment of the reparation that it has not already either interposed or waived in the proceedings before the commission." It seems to us, therefore, that the words of Judge Van Valkenburgh, in his opinion in deciding the case in the District Court, quoted *supra*, are quite appropriate, and unanswerable.

C. **The evidence on which the award by the Commission was based was not hearsay, but even if it were it is competent and admissible if not objected to at the time it is offered.**

I. C. C. v. *Baird*, 194 U. S. 25.
I. C. C. v. *L. & N. R. R.*, 227 U. S. 88.
L. & N. R. R. v. *Finn*, 235 U. S. 606.
Kane v. *Mo. Pac. R. R. Co.*, 251 Mo. 13.
Woolf v. *Edmondson*, 240 Fed. 53.
Wigmore on Evidence, Vol. 1, Sec. 18.
Gregory v. *Dodge*, 14 Wend. 593, 617.
Wigmore on Evidence, Sec. 586.
17 Cyc. p. 564.
17 Cyc. Sec. 92, p. 166.
Mathis v. *O'Neal*, 94 Mo. 527.

In *Gregory* v. *Dodge*, 14 Wend. 593, 617, the court said:

> "If a party does not object, he admits the competency of a witness. To allow a different rule would lead to great injustice. It is a trite, but nevertheless, a very equitable saying, 'if a party will not speak when he ought to, he will not be heard when he wants to speak.' If no objection is made the other party is well justified in supposing it is not intended to be made."

Wigmore, at page 166, states the rule as follows:

> "Of the probative value of a person's habit or custom as showing the doing on a specific occasion of the act which is the subject of the habit or custom, there can be no doubt. Every day's experience and reasoning make it clear enough."

And at Sec. 94, the same author says:

> "Where a transaction of selling, or of authorizing an agent to sell, has taken the form of a usual and fixed course of business between two persons, this habit is admissible to indicate the probable tenor of a particular transaction; the circumstances will determine whether in a given case the relations have reached a sufficient degree of fixity to become relevant." Citing authorities.

It was shown that it was the habit and custom of all commission companies to whom live stock is shipped to sell on the markets, to enter upon their books an account of sales bearing the name of the owner, the number of cars, the number of cattle, the point of origin and destination, the delivering carrier, the weight, the amount of freight, the sale price, and to remit to the owner the balance of the proceeds of sale, after deducting the freight paid out of it to the carriers. This course of business is a matter of common knowledge. It was as well known to the carriers as to anybody. It was well known to the commission. It was proven by the undenied statements of counsel (R. 202, 209, 211, 212, 213, 230, 254, 271, 272); by the testimony of the witness, Williams (R. 216, 217, 274, 275); by the admissions of the carriers (R. 215, 262, 281 to 291, 300); by offers of proof through Mr. Moore, bookkeeper of

one of the commission firms, and who had the books of the company in court (R. 247, 268).

The commission found, *"on the facts admitted,* that you have paid the freight and are entitled to reparation. We hold that the payment of an unreasonable charge imports damage, that of itself shows damage. Now, the railroads claim to the contrary, and are going to try that question." That question was the real matter contested, the measure and proof of damage. In *Southern Pacific Co.* v. *Darnell-Taenzer Lumber Co.,* this court has upheld the decision of the commission as to measure and proof of damages. The opinion of the Court of Appeals on the other questions passed on by it is just as fallacious as was its first opinion in this case on the measure and proof of damages.

D. **The shippers and owners being in possession of the live stock when delivered to the carriers were prima facie the owners.**

In addition to the testimony of Mr. Williams and the statements of Mr. Cowan as to what the commission companies' books showed and the custom of the commission houses to keep their accounts only in the names of the owners, the fact that in all of those claims which were allowed and which were checked by the carriers, and the movements of which were admitted by the carriers, that the name of the owner and the consignor were the same—shown by Exhibit A, that said shipments were made in the names of the consignors, the owners named in the slips furnished to the carrier is

evidence of ownership. That fact shows the consignor was in possession of the cattle, making the shipment. That is evidence of ownership. The names of caretakers were not. While ordinarily where the consignment is not to a shipper's order, the presumption, in the absence of evidence, is that the consignee is the owner, that is only a presumption and may be overcome by proof of the actual fact. It is overcome in this case by proof that the consignments were for sale on commission and the proceeds to be remitted to the shipper, the owner. The commission houses themselves furnished the information showing these facts, by the slips which they furnished to the secretary of the Cattle Raisers' Association. The proof was therefore sufficient that none of the consignees claimed title to the shipments, so that the presumption of title in the consignees is overthrown, and the presumption of title in the consignor from the possession by the consignor, arises and will prevail without further proof, or proof to the contrary.

In 16 Cyc. 1074, it is said:

> "A rebuttable presumption of ownership, which in the absence of evidence to the contrary, the law will assume to be correct, arises from the possession of real or personal property. Where several persons are in the apparent possession, the presumption of title is in favor of him whose acts of control and dominion predominate."

In support of the text are cited:

Bradshaw v. *Ashley*, 180 U. S. 589.
Belford v. *Scribner*, 144 U. S. 488.
The Carlos F. Ross, 177 U. S. 655.
Hazard Powder Co. v. *Volger*, 58 Fed. 152.

Railway v. *Johnson*, 54 Fed. 474.
Railway v. *Lewis*, 51 Fed. 658.
Hudson v. *Willis*, 73 Texas, 256.
Cooley on Torts (3 Ed.) pp. 848, 849, 850.
Hutchinson on Carriers, Sec. 1308 (3 Ed.)
Secs. 1309, 1318, 1320.

In Sec. 1308, Hutchinson states his conclusion on the subject as follows:

> "It may, therefore, be concluded. First, that when the risk of the safe transportation of the goods is upon the consignor, he will be considered as the owner for the purpose of maintaining an action against the carrier for their loss or injury. Secondly, that whether he retains any property in the goods or not, if the contract for the transportation by the carrier is directly with him, he may maintain the action upon such contract in his own name for the failure safely to carry and deliver to the consignee; but that the recovery in such a case will be for the benefit of the consignee, if he was the real owner of the goods. Thirdly, that the law will presume, when nothing appears to the contrary, that the consignee is the owner of the goods, and that the contract for their transportation was made with him as such owner, but that this presumption may be rebutted by showing the actual facts or the intention of the parties to the contrary. Fourthly, that the consignee who had no property in the goods, either general or special, and incurred no risk in their transportation, cannot maintain an action for their loss or damage."

In *Hare* v. *Young*, 146 Pac. 107, in paragraph 3 of the syllabus, the court says:

> "Possession of personal property is *prima facie* evidence of ownership."

E. **The carriers cannot question the title of the consignors because the carriers were bailees.**

This is abundantly shown by the following authorities:

> "A carrier, like any other bailee, must respect the apparent ownership of the shipper from whom he received possession, and cannot question the shipper's right to the goods in case the transaction is not such as to import a transfer of title to the consignee, although as matter of fact the shipper is not the real owner."
>
> 6 Cyc. 434-5.

> "The general rule is that the carrier like any other bailee is not at liberty to dispute the title of the consignor from whom it receives articles of shipment in an action brought by him, the reason usually assigned being that, if the contrary doctrine prevailed, the carrier might by setting up title in some third person, keep the property for itself."
>
> 10 Corp. Juris. 229 Sec. 318.
> *Hentz* v. *The Idaho*, 93 U. S. 575.
> *Denver, etc. R. Co.* v. *Frame*, 6 Colo. 382.
> *Carter* v. *Southern R. Co.*, 111 Ga. 38.
> *Great Western R. Co.* v. *McComas*, 33 Ill. 185.
> *Valentine* v. *Long Island R. Co.*, 92 N. Y. Supp. 645.
> *Western Transp. Co.* v. *Barber*, 56 N. Y. Supp. 44.
> *Atchison* v. *Ry. Co.*, 80 Mo. 213.
> *Ross* v. *Ry. Co.*, 119 Mo. App. 290.

The evidence in this case and conduct of the parties before the commissioner is sufficient to show that the cattle in question were all shipped for sale on the market by the commission companies for the benefit of the shippers and therefore the presumption of title being in the

consignee is overcome, and that leaves the presumption that the consignor is the owner with the right to sue for damages in full force. This proposition was not passed upon by this court. *Com. Club of Omaha* v. *A. & S. R. Co.*, 27 I. C. C. 302, 322. It seems to us worthy of consideration, and is sufficient in law to show who were the owners and who paid the freight and therefore who were damaged and the assignments having been made by such consignors, the legal title was vested in Spiller with the right to recover the damages suffered.

III.

There was sufficient evidence to support the findings of the Commission that the claims had been legally assigned to plaintiff in error. Such assignments were absolute in form and passed the legal title of the claimants to plaintiff in error and authorized making the award of reparation to him. The rights assigned were property rights and would survive the death of the assignors.

Denial of this proposition was not made before the Commission. It was raised for the first time in the Circuit Court of Appeals. The defendants in error pleaded that claims for reparation were not assignable, that point was decided against them by the District Court, and not passed upon by the appellate court. The appellate court is in error upon the facts. It said:

> "Some of the claims, if assigned at all, were assigned to Crowley, others to Spiller, others still, and it did not appear which ones were simply placed with the Cattle Raisers Association for collection."

The record discloses exactly what claims were assigned to Crowley, also that all such claims were assigned by Crowley to Spiller. The record also shows exactly what claims were assigned to Spiller. It also shows exactly what claims were not assigned. Appendix A shows those facts by the letter C or letter S, or by the absence of those letters. Claims not followed by C or S were not assigned at all (R. 106, 294, 295). Such claims not assigned were allowed and order made for reparation in the name of the owner and shipper and a separate suit was brought in their names. They are not involved in this case at all. So there can be no question that all of the claims involved in this case were assigned to Spiller before the order of reparation was made, and after the claims were filed with the Commission by the assignors.

A. THE DAMAGES CLAIMED, AND FOR WHICH THE AWARD WAS MADE AROSE OUT OF TORT, AND AFFECTED THE PROPERTY AND NOT THE PERSON OF THE SHIPPER. SUCH CAUSES OF ACTION SURVIVE THE DEATH OF THE CLAIMANT AND ARE ASSIGNABLE.

Comegys v. *Vasse*, 1 Pet. 193.
Irwin v. *U. S.*, 97 U. S. 396.
Edmunds v. *Ill. Cent. R. R.*, 80 Fed. 78.
4 Cyc. pp. 23-26.
Davis v. *R. R.*, 25 Fed. 786.
5 Corpus Juris, 593.
Rucker v. *Bolles*, 80 Fed. 1. c. 510.
5 Corpus Juris, 958, 985, 994.
George v. *Tate*, 102 U. S. 564.
Pomeroy's Remedies & Rem. Rights, Sec. 617.
Remmers v. *Remmers*, 217 Mo. 560, 561.

In 4 Cyc. p. 23, it is stated:

"*Torts—In General.* In distinguishing between rights growing out of tortious acts, that are assignable, and such as are not assignable, the test most generally applied is that if the right of action arising from the act is in its nature such that it will, upon the death of the party aggrieved, survive to his personal representatives, it is assignable, and if it will not thus survive it is not assignable."

And at p. 24:

"c. *Torts to Property.* But a right of action for a tortious act occasioning injury to property—such as trespasses, the conversion of personal property, or actions on the case for negligence resulting in the damage or destruction of property, are assignable."

And in *Comegys* v. *Vasse*, 1 Pet. 193, 7 Curt. 529, this court said:

"In general it may be assumed that mere personal torts which die with the party and do not survive to his personal representatives are incapable of passing by assignment, but that vested rights *ad rem* and *in re* possibilities coupled with an interest and claim growing out of and adhering to property, will pass by assignment."

In *Rucker* v. *Bolles*, 80 Fed. 504, 511, Judge Thayer, in the opinion, said:

"The rule that choses in action are not assignable has not only been abolished, but the prevailing doctrine is that causes of action in torts to property, real or personal, which survive the executor or administrator, are also assignable. (Citing authorities.) Under a variety of circumstances which may be supposed, a man might find it neces-

> sary to sell or hypothecate an interest in a claim which happened to be in litigation, for the purpose of raising money wherewith to prosecute his business successfully, or to assert or defend his rights in the courts, and it would be a great hardship if he were denied the right to raise money by such means, or if money so obtained could not be recovered."

In *Davis* v. *R. R.*, 26 Fed. 786, the late Justice Brewer said:

> "Plaintiff says that the defendant neglected its duty, and by its neglect the property of his assignor suffered damage, and the claim is that such cause of action in favor of the assignor is one of tort and not assignable. It is not a tort to the person. It is a tort which resulted, as alleged, injuriously to the estate. Such a tort, it seems to me, under our Kansas statute, is assignable."

He quotes from Pomeroy's work on Remedies and Remedial Rights, as follows:

> "It is fully established, by a complete unanimity in the decisions, that causes of action which survive and pass to the personal representatives of a decedent, as assets, or continue as liabilities against such representatives, are in general assignable, while those causes of action which do not thus survive are not assignable. * * *
>
> It is now the general American doctrine that all causes of action arising from torts to property, real or personal injuries to the estate by which its value is diminished—do survive and go to the administrator or executor as assets in his hands. As a consequence, such things in action, although based upon a tort, are assignable."

This doctrine also applies to rights conferred by statute. Thus, at 4 Cyc. 26, it is stated:

> "Statutory rights giving compensation for property loss suffered are generally said to be assignable, whereas rights to recover penalties and rights given by statute for the redress of personal wrongs are not assignable."

In 5 Corpus Juris, 593, the doctrine is as stated:

> "But on the other hand, even though a right may arise under a statute, it will be assignable if it is a vested one relating to the estate of the beneficiary, and this is the rule where the liability created by the statute rests on the same ground as any other promise to pay."

In *Edmunds* v. *Ill. Cent. R. R. Co.*, 80 Fed. 78, the exact question arising under the Interstate Commerce Act as here, was determined by that court. That was a suit to recover damages for unreasonable overcharges upon interstate shipments of freight, the right of action being based upon the provisions of the Interstate Commerce Act. The court held claims for damages to recover overcharges under Sections 8 and 9 of the Interstate Commerce law, constitute property rights which may be assigned so as to convey the beneficial interest therein to the assignee.

The court said:

> "If, therefore, a property right in the nature of a claim for illegal overcharges is owned by A, he being the original shipper, he has the right, as the party in interest, to seek reparation by invoking the aid of the Commission, or he may sue the carrier directly in an action at law. This claim

being in the nature of a property right, A can lawfully assign to B, and, upon becoming the beneficial owner thereof, no reason exists why the remedies provided for in the Act are not open to B as the real and beneficial owner of the claim. The assignment of the claim defeats no defense existing thereto, nor does it in any way impose any greater burden upon the carrier in meeting the same; and there appears no good reason why a person who holds the beneficial interest in the claim for damages may not invoke either of the remedies provided for by Section 9 of the Interstate Commerce Commission."

Counsel may cite the Parsons case, 167 U. S. 447; but that case is not in point upon the proposition, because the right to recovery was denied, not because the plaintiff was an assignee, but because his assignor had no case, nobody had any case, as disclosed by the facts and circumstances of that case.

In the language of Judge Van Valkenburgh, in the lower court, it may very appropriately be said:

> "Suppose he (referring to the shipper) died the next day—is it to be said that his estate would be without remedy to recover that which might amount to a very large sum of money? Suppose he died before the possibility of filing a claim or taking any steps for the preservation of his rights before the Interstate Commerce Commission? I do not think that anybody will say that that subsisting right would not remain. Now, if that is true, why could he not make an assignment of any such right he had, unless the language expressly forbids it, which I think it does not."

IV.

There was no objection of any kind before the Commission to the sufficiency of the proof of the assignment, or to the form thereof, or that the legal title did not pass to the assignee, or that the claim was not assignable.

The proposition that "The evidence showed the purpose of the assignment was not such as to vest the legal title in Spiller so as to authorize the Commission to make the award to him," was not pleaded nor argued in the court below, nor before the Commission. We have carefully read and re-read the record before the Commission, and we fail to find a single objection therein, made by any of the carriers, to the assignments, based upon the claim that the assignments did not vest the legal title in the assignee. We have failed to find any objection before the Commission based upon the ground that the claims were not assignable. There was no objection before the Commission to the assignments, on that ground. There was a colloquy between the Commissioner and counsel for claimants as to whether the order or reparation should be in the name of the claimant or assignee, but none of the carriers asserted the legal title did not vest in Spiller by virtue of the assignments. There was no objection that the proof was insufficient as to the assignments. The objection was as to the sufficiency of the proof as to the damages suffered. It was stated thus:

> "Commissioner Prouty: I understand the Commissioner must find that the owner of the cattle himself paid the freight, either himself or through

some agent, and Mr. Dickinson objects that there is not sufficient proof of that.

Mr. Cowan: I do not understand Mr. Dickinson that way. I understood Mr. Dickinson to mean that there is not sufficient evidence to prove that the commission man is the man to collect and pay back overcharges?

Mr. Dickinson: No; the Commissioner has my view."

We deem it unnecessary to cite authorities to this court that no appellate court will consider objections to testimony, or the competency or sufficiency thereof, made for the first time in the appellate court and not made before the lower court or before the Commission. The question raised in the District Court was, not that the proof was such as not to vest the legal title in the assignee, but as follows:

> "That plaintiff was not the assignee of the shippers; that the Interstate Commerce Commission was without legal proof that he was assignee, and that the said Commission was without jurisdiction to entertain or pass upon a claim by an assignee" (p. 38).

And in the Court of Appeals the only points raised by the assignment of errors as to the assignments were as follows (p. 52):

> "The Interstate Commerce Commission did not have before it any legal or competent evidence of an assignment by any shipper to the plaintiff Spiller, or to said Crowley, relating to any of the claims involved herein, and its finding of an assignment thereof was unsupported by competent evidence and was therefore void and contrary to law.

X.

"The court erred in holding that the Interstate Commerce Commission had evidence before it to support an award of reparation in favor of Spiller as assignee.

XIII.

"The court erred in holding that there was competent evidence or sufficient evidence, or any evidence before the Interstate Commerce Commission, upon which it could find that there were valid assignments of the claims sued on by the plaintiff Spiller."

In the court below, the defendants in error argued that the claims were not assignable, and they argued there was no proof of the assignments. But not until the case reached the Court of Appeals was there any question raised that the assignments did not vest the legal title in the assignee.

From the testimony offered, it appears that all of the assignments were at hand at the hearing before the Commission, and Mr. Cowan stated he would file them. They were all tendered; one of them was read into the record. They were absolute in form, and all alike except as to signature. Mr. Williams testified he knew as a fact they had been made and signed by the person in authority to do so. The assignment of Mrs. Adair was produced. The assignments also from Mr. Crowley to Mr. Spiller were produced. To have offered and proven each one separately would have taken a great deal of time. It was apparently and naturally the desire of all parties to expedite matters and save unnecessary labor. So the Commissioner said:

"I take it, gentlemen of the defense, it would not be your desire to put Mr. Cowan to the necessity of making proof in each individual case. There is no doubt about it, I suppose, and we will find unless there is some objection, that this assignment was regularly made by the person purporting to execute it."

The Court of Appeals said:

"The remarks of the Commissioner related only to the assignment of the claims to Mrs. Adair."

That the Court of Appeals is wrong in that construction is shown by the language of the Commissioner in referring "to the necessity of making proof in each individual case," and later the Commissioner said: "I don't think you need to go into that; unless there is some objection we will find the fact of the assignment according to the language of the assignment itself in all these cases where an assignment has been made, and you indicate in whose favor the order should be made in all cases."

The District Court said of this feature of the case:

"No objection was recorded to these suggestions of the Commissioner. On the contrary, the examination by Mr. Humberg, of counsel for the defense, at page 321 of the record before the Commission discloses acquiescence in the suggested abridgment of the formal proofs. Such things are common in courts of law in the interest of economy of time and labor, and still more so in more informal proceedings before Commissions. It is true that at the end of the hearing the defendants interposed objections as to the sufficiency of the proof, but after such an attitude assumed in the course of

the trial, courts generally would not entertain such an objection as reaching offer of this kind, proposed for convenience and acquiesced in by counsel, at the earlier stage of the proceedings. It is apparent that counsel for defendants were at that time laying greater stress upon the non-assignability of the claims than they were upon the forms of the assignment made. The record as a whole but further strengthens the conclusion reached. The Commission was not without evidence upon which to find that there were valid assignments of the claims sued on made by the parties in interest, ultimately to the plaintiff, Spiller."

The Court of Appeals said in its opinion:

"The witness Williams could not know, in the very nature of things that over two thousand shippers and claimants had assigned their claims to Crowley and Spiller."

The witness Williams so testified. Why could he not know? He had all of the assignments in his possession. He had them present in court. He was the man who procured them for the Cattle Raisers' Association. He sent out the assignments to be made "by the person in authority," and so far as shown he knew the signatures. But in making the above statement the Court of Appeals passed upon the credibility of the witness and not upon whether there was evidence to support the finding. We understand the rule to be that appellate courts will not pass upon the credibility of the witnesses nor the weight of the testimony—that if there was any evidence to support the finding of the lower court it would be upheld. *I. C. C. v. L. & N. Ry.*, 227 U. S. 88, 92. This court held:

> "In a case like the present, the courts will not review the Commissioner's conclusions of fact by passing upon the credibility of witnesses or conflicts in the testimony."

The Court of Appeals further said:

> "We are of opinion that when a carrier is cited to show cause why it should not be adjudged to pay damages for collecting an unjust rate, it cannot be so adjudged by being told if no objection is made the Commission will proceed and award them."

The illustration is not analogous. The question is and was as to the proof of the assignments, not as to proof of damages. We concede that damages must be proven, and this court has held that they are proven by proving the rate paid and the rate found to be reasonable, and that the difference is the amount of damages. *Southern Pacific R. R. Co.* v. *Darnell-Taenzer Lbr. Co., supra.* But that does not apply to the proof of the assignments.

> "It is a trite, but nevertheless a very equitable saying, if a party will not speak when he ought to, he will not be heard when he wants to speak. If no objection be made the other party is well justified in supposing that it is not intended to be made."
> *Gregory* v. *Dodge*, 14 Wend. 593, 617.

The court said, even if the proof of the assignments was sufficient that the legal title was not vested in the plaintiff in error so as to authorize the award of damages to be made to him by the Commission.

We confess our inability to understand exactly what was meant by the Court of Appeals by that language.

If the court meant that the purposes of the assignment as shown by the evidence showed that the assignments were champertous or savoring of maintenance, as was argued by the counsel for the carriers in the Court of Appeals, then we submit such question should not be considered here because the same was not pleaded nor presented to the lower court in any form or manner whatever. There was, however, no fact shown in evidence on which to base any charge or finding that the assignments were champertous or colorable in any way. But, in arguing this question, suppose the assignments were all for the benefit of the owners and shippers of the cattle and that they retained an interest in them, it would not affect their validity.

In 4 Cyc. 67, it is said:

> "When a chose capable of legal assignment is assigned absolutely to one, but the assignment is made for the purpose of collection, the legal title thereto vests in assignee, and it is no concern of the debtor that the equitable title is in another. The assignee may prosecute an action therein in his own name."
>
> 5 Corpus Juris, 958.
> *Grieg* v. *Riordan*, 99 Cal. 316.
> *Ballinger* v. *Yates*, 26 Colo. St. 116.
> *Denver Eng. Works* v. *Elkins*, 179 Fed. 922.

At p. 69 of 4 Cyc., it is said:

> "An unqualified assignment of a chose in action carries with it, as incident to the chose, all securities held by the assignor as collateral to the claim and all rights incidental thereto."
>
> *George* v. *Tate*, 102 U. S. 564.

Winstead v. *Bingham*, 4 Woods (U. S.) 510.
Corpus Juris, 958, Sec. 145.
Cowdrey v. *Vandenburgh*, 110 U. S. 572.
Western Union Tele. Co. v. *Western, etc.*, 91 U. S. 283.

At p. 71 of 4 Cyc., it is said:

"As the rights to the chose and its incidents pass to the assignee thereof, so does the right to the remedies which the assignor had for the enforcement of the same."

5 Corpus Juris, 261-2, and cases cited.

At pages 99 and 100 of 4 Cyc., it is said:

"Where an assignment of anything in action is absolute in its terms, so that the apparent legal title vests in the assignee, the assignee may sue in his own name without joining the assignor as a party, although there was no consideration for the assignment, and notwithstanding whatever collateral arrangements exist between him and the assignor as to the disposition to be made of the proceeds, the assignment being a complete protection to the assignor. And this has been held although the chose was assigned as collateral security merely."

5 Corpus Juris, 985.
Pomeroy's Remedies & Rem. R., Sec. 132.
Wothers v. *Green*, 9 How. 213.
Scott v. *Lunt*, 7 Pet. 596.
Many cases cited note 99, p. 985, of 5 Cor. Jur.

In 5 Corpus Juris, 994, Sec. 199, it is said:

"Consideration for assignment. The general rule is that the reasons and considerations for an assignment, or the object sought to be attained thereby, will not be inquired into in an action by the assignee, but that the action is properly

91

brought by the assignee as the real party in interest if the assignor has transferred all apparent interest and title in and to the subject matter, although the assignee may be only an agent or trustee, and others may be beneficially interested."

Citing, among others:

Martin v. *Ellis*, 9 Fed. 367.
Krapp v. *Eldridge*, 33 Kan. 106.
Cottle v. *Cole*, 20 Iowa, 481.
Gurney v. *Moore*, 131 Mo. 650.
Foster v. *Central Nat. Bank*, 138 N. Y. 379.

Reason for the Rule.

"By the assignment he becomes the real party in interest, because he has a valid transfer as against the assignor and holds the legal title to the demand."

King v. *Miller*, 53 Ore. 53-62.

"If as between the assignor and the assignee the transfer is complete, so that the former is divested of all control and right to the cause of action, and the latter is entitled to control it and receive its fruits, the assignee is the real party in interest, whether the assignment was with or without consideration, and notwithstanding the assignee may have taken it subject to all equities between the assignor and third persons."

Cummings v. *Morris*, 25 N. Y. 625.
Chase v. *Dodge*, 111 Wis. 70.

"An assignment of a claim for collection is an assignment for value and vests such an interest in the assignee as entitles him to sue thereon in his own name."

The Rupert City, 213 Fed. 263.

"Where an assignment of a chose in action is absolute, the assignee is as to the debtor, the

real party in interest, although the assignor is to receive the proceeds."

Sheridan v. *New York*, 68 N. Y. 30.
Allen v. *Brown*, 44 N. Y. 228.

Section 16 of the Act provides for joining in one suit all parties, plaintiffs and defendants, to recover the damages suffered, thus providing a new procedure formerly unknown to the practice, and this section further provides that "the complainant or any person for whose benefit such order was made" may file suit to enforce the order.

E. B. Spiller, the claimant, is secretary of the Cattle Raisers Association, of Texas, of which the owners of the cattle shipped are members. As such members they prosecuted the matter before the Commission in the name of the association instead of individually as provided by Section 13 of the Act, and assigned their claims to Spiller to obtain separation. The assignments conveyed property.

"When property is conveyed, the fact that the grantee may be compelled to bring a suit to enforce his right to the property does not render the conveyance void."

Edmunds v. *Ill. Cent. R. R. Co.*, 80 Fed. 78.

It therefore seems absolutely clear that the Court of Appeals committed error in holding that the legal title did not vest in Spiller. When the commissioner said:

"I don't think you need go into that; unless there is some objection, we will find the fact of the assignments according to the language of the

> assignment in all cases where the assignment has been made to you, indicating in whose favor the order should be made in all cases."

And no objection was made. Can counsel remain silent under such circumstances, and afterwards in an appellate court make objection that the assignments were not proven? As stated by the learned district judge, Van Valkenburgh, before whom the case was tried below:

> "Such things are common in courts of law, in the interest of economy of time and labor, and still more so in more informal proceedings before commissions. It is true that at the end of the hearing defendants interposed objection as to the sufficiency of the proof; but after such an attitude assumed in the course of the trial, courts generally would not entertain such an objection as reaching an offer of this kind, proposed for convenience and acquiesced in by counsel at the earliest stage of the proceedings."

But the objection made before the commission at the end of the proceedings, as to the sufficiency of the proof, did not refer to the sufficiency of the proof of the assignments, but the sufficiency of the proof as to the damages and who paid the freight. Undoubtedly, at the time the matter of proving the assignments was before the commission, none of the carriers had any thought of making an objection that the proof of the assignments was not sufficient.

The witness, Williams, had all the assignments present before the commission, ready and prepared to prove the same, and it was a matter susceptible of proof, so that it seems to us to be unjust and unfair after such

an attitude on the part of the defendant in error's counsel before the commission to say that the proof of the assignments was not sufficient.

If the Court of Appeals was right in holding that the purpose of the assignment was not such as to vest the legal title in the plaintiff in error so as to authorize the commission to make the award to him, then the decision of the Court of Appeals is final, because there is no other proof that could be made on that subject. But we believe we have shown by the authorities cited herein that the legal title was vested in plaintiff in error and that the commission was authorized to make the award to him, and therefore the decision of the Court of Appeals should be reversed and the judgment of the District Court should be affirmed.

If the Court of Appeals meant, by holding the purpose of the assignment was not such as to vest the legal title in the plaintiff in error so as to authorize the commission to make the award to him, that the claims were not assignable, and that the commission had no power to make an award to an assignee, then we think we have shown by the authorities cited herein the Court of Appeals was in error. The fact that the rights to reparation are conferred by statute, does not change the rule. There are no words in the statute indicating the rights are confined to the person and could not be enforced by an heir, legal representative or assignee.

In 4 Cyc. 26, it is stated:

> "9. *Statutory Rights.*—There is nothing peculiar to rights conferred upon one by statute that

in itself forbids the assignment of such rights. As to such rights, it may be said that the assignability or non-assignability of them depends in each case upon the language of the statute conferring the rights. If the statute forbids the assignment of the right conferred by it, or if the legislative intent, as shown by the act, is to confer a right strictly personal to the person upon whom it is conferred, then such right is not assignable. In the absence of such express or implied prohibition, the assignability or non-assignability of rights conferred by statute is to be governed by the principles governing the assignability or non-assignability of choses in action in general. Statutory rights giving compensation for property loss suffered are generally said to be assignable, whereas rights to recover penalties and rights given by statute for the redress of personal wrongs are not assignable."

A large number of cases are cited in support of the text.

5 Corpus Juris 593, states the doctrine thus:

"But, on the other hand, even though a right may arise under a statute, it will be assignable if it is a vested one relating to the estate of the beneficiary, and this is the rule where the liability created by the statute rests on the same ground as any other promise to pay."

V.

The Circuit Court of Appeals erroneously held that, in proceedings before the commission, counsel for respondents were not bound by their acquiescence in the proceedings, and their failure to object to the testimony as incompetent or hearsay, as they would be in a court of law, but that they may take advantage of a

general objection at the close of the hearing, that the evidence is not sufficient to support the finding and upon trial in the District Court then make objections to the competency of the evidence and have the court reject such testimony.

Such ruling is contrary to all precedent, unfair to claimants and the commission, misleading and unjust. While it is true that the commission is an investigating body and is not bound by the strict rules of evidence, yet we submit that parties to proceedings therein should be and are estopped by their conduct and acts before that body, as they would be before a court.

VI.

The Court of Appeals erred in holding that the question of the reasonableness of the rate is open for the jury or the court to pass upon, in an action on an order for reparation made by the Interstate Commerce Commission, after the Commission had found such rate to be unreasonable.

The decision of the Circuit Court of Appeals in that respect is in direct conflict with the decision of the Supreme Court in the following cases:

Texas & Pac. R. R. Co. v. *Abilene Oil Co.*, 204 U. S. 426, 444.
I. C. C. v. *C. R. I. & P. R. R.*, 218 U. S. 110.
I. C. C. v. *L. & N. R. R.*, 227 U. S. 88.
U. S. v. *L. & N. R. R.*, 235 U. S. 314, 320.
I. C. C. v. *Ill. Cent. R. R.*, 215 U. S. 452.
I. C. C. v. *D. L. & W. R. R.* 220 U. S. 235.
Manufacturers Ry. Co. v. *U. S.*, 246 U. S. 457, 489.

In Abilene Oil Co. case, *supra*, page 444, it was said:

> "It was therefore declared to be the duty of the courts where the Commission had not considered a disputed question, to remand the case to the Commission to enable it to perform that duty—a conclusion wholly incompatible with the conception that courts, in independent proceedings, were empowered by the Act to Regulate Commerce, equally with the Commission primarily to determine the reasonableness of the rates in force through an 'established schedule.'"

And in *I. C. C. v. C. R. I. & P. Ry.*, 218 U. S. 110, this court said, referring to the findings of the Commission upon the character of the rates:

> "Such decision, we have said *with tiresome repetition*, is peculiarly the province of the Commission to make, and that its findings are fortified by presumption of truth 'due to the judgment of a tribunal appointed by law and informed by experience.'"

And in *Mitchell Coal & Coke Co. v. Penn. Ry. Co.*, 230 U. S. 247, this court said:

> "There is a necessity which is recognized by the Act to Regulate Commerce, of having questions as to the reasonableness of rates and allowances settled by a suitable tribunal, in order to avoid the conflicting decisions which would result if several tribunals could pass upon the same question, and the Act itself has designated the Interstate Commerce Commission as that tribunal."

VII.

The Court of Appeals further erred in holding that where a rate subsequently condemned by the Interstate Commerce Commission as unreasonable, was when exacted a legal rate, that the shipper could not sue in a court of law and recover back any portion of such rate.

Southern Pacific R. R. Co. v. *Darnell-Taenzer Lbr. Co. et al.*, 245 U. S. 531.

Texas & Pac. R. R. Co. v. *Abilene Oil Co.*, 204 U. S. 426.

Southern Ry. Co. v. *Tift*, 206 U. S. 428.

Illinois Central R. Co. v. *I. C. C.*, 206 U. S. 441.

Meeker v. *Lehigh Valley R. R. Co.*, 236 U. S. 412.

Mills v. *Lehigh Valley R. R. Co.*, 238 U. S. 473.

Mitchell Coal & Coke Co. v. *Penn. Ry. Co.*, 230 U. S. 247.

The rate exacted was lawful only if it was reasonable. The carrier took that chance in establishing the rate. If unreasonable, then it was unlawful, and the carrier collected what it was not lawfully entitled to.

VIII.

The court erred in holding that in fixing the rate for a period of two years in the future and allowing reparation for the exaction of an unreasonable rate during the two years prior to the order fixing the rate for the future, the Interstate Commerce Commission fixed the rate for a longer period than authorized by law, there-

fore the order of reparation was improper and the shipper could not recover the difference between the rate paid and the rate found to be reasonable at the time of such payment.

So. Pac. R. Co. v. *Darnell-Taenzer Lbr. Co.*, 245 U. S. 531.

Texas & Pac. R. Co. v. *Abilene Oil Co.*, 204 U. S. 426.

Southern Ry. Co. v. *Tift*, 206 U. S. 428.

Ill. Cent. R. Co. v. *I. C. C.*, 206 U. S. 441.

Meeker v. *Lehigh Valley R. R. Co.*, 236 U. S. 412.

Mills v. *Lehigh Valley R. R. Co.*, 238 U. S. 473.

Mitchell Coal & Coke Co. v. *Penn. Ry. Co.*, 230 U. S. 247.

IX.

The Court of Appeals erred in holding that the order of reparation made by the Commission is void for the want of sufficient evidence to support it, in this suit, to which the Commission is not a party. The court thereby attacked the validity of the order of the Commission in a collateral proceeding.

In all cases heretofore determined by this court, setting aside orders of the Commission, the Commission has been a party. It has been held in *East Texas R. R. Co.* v. *R. R. Commission of Texas*, 242 Fed. 304, 305 (same case, 247 U. S. 214), with reference to orders of the Commission:

> "The validity thereof can only be attacked directly—it certainly cannot be attacked collaterally in any case."

Orders of the Commission are final and not reviewable in any court on all questions of fact, unless:

1. Beyond the powers which it may constitutionally exercise.

2. Beyond its statutory powers.

3. Based upon a mistake of law.

4. When law and fact are intermixed. None of which conditions exist in this case. The findings of the Commission were based wholly upon facts and were within its constitutional and statutory powers and were not based upon a mistake of law, nor were facts and law intermixed.

Interstate Commerce Commission v. *Union Pacific R. R.*, 222 U. S. 541, 545.

Southern Pacific Co. v. *I. C. C.*, 219 U. S. 433.

I. C. C. v. *Ill. Cent. R. R.*, 215 U. S. 470.

I. C. C. v. *Northern Pacific R. R.*, 216 U. S. 544.

I. C. C. v. *Alabama & Midland R. Co.*, 168 U. S. 146.

I. C. C. v. *L. & N. R. R.*, 227 U. S. 88.

The findings of the Commission on questions of fact are conclusive except as pointed out in the above cases.

I. C. C. v. *L. & N. R. R.*, 235 U. S. 320.

X.

Section 16a of the Interstate Commerce Act provides that any party may apply for a rehearing in any proceeding before the commission. We submit that failure to apply for a rehearing should preclude a party from afterwards attacking the order of the commis-

sion on the ground that it is unsupported by sufficient evidence.

St. L. & W. R. Co. v. *Samuels & Co.*, 211 Fed. 588, 593.

We have heretofore considered the 10th and 11th assignments of error, and shown wherein the decision of the Court of Appeals is in conflict with the decisions of this court, as set forth in the twelve assignments of error, and if we are right in our contention, it follows as a matter of course, that the 13th assignment of error is well taken, and that the Court of Appeals erred in reversing and remanding the case for a new trial.

We respectfully submit this court should reverse the opinion of the Court of Appeals for the Eighth Circuit and affirm the opinion and judgment of the District Court.

Respectfully submitted,

SAMUEL H. COWAN,
BUCKNER F. DEATHERAGE,
Attorneys for Plaintiff in Error.

I. H. BURNEY,
GOODWIN CREASON,
Of Counsel.

FILED
DEC 8 1919
JAMES D. MAHER,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1919.

No. 137.
E. B. Spiller, Plaintiff in Error,
vs.
The Atchison, Topeka & Santa Fe Railway Company.

No. 138.
E. B. Spiller, Plaintiff in Error,
vs.
Chicago & Eastern Illinois Railroad Company.

No. 139.
E. B. Spiller, Plaintiff in Error,
vs.
Chicago & Alton Railroad Company.

No. 140.
E. B. Spiller, Plaintiff in Error,
vs.
The Missouri Pacific Railway Company.

No. 141.
E. B. Spiller, Plaintiff in Error,
vs.
St. Louis, Iron Mountain & Southern Railway Company.

No. 142.
E. B. Spiller, Plaintiff in Error,
vs.
St. Louis & San Francisco Railroad Company.

No. 143.
E. B. Spiller, Plaintiff in Error,
vs.
Chicago, Rock Island & Pacific Railway Company.

No. 144.
E. B. Spiller, Plaintiff in Error,
vs.
Illinois Central Railroad Company.

No. 145.
E. B. Spiller, Plaintiff in Error,
vs.
Missouri, Kansas & Texas Railway Company.

BRIEF FOR DEFENDANTS IN ERROR.

GARDINER LATHROP,
T. J. NORTON,
C. S. BURG,
JAMES L. COLEMAN,
Attorneys for Defendants in Error.

BUNTIN-HUDSON PRINTING COMPANY, ST. LOUIS.

SUBJECT INDEX.

Page

Statement of the case 1

Brief of the argument 11

First. There was no evidence before the Interstate Commerce Commission justifying an award of reparation or damages to E. B. Spiller or to anybody else 11

I. Best evidence was available 12

II. Complainant's evidence hearsay only 26

III. Presumption from Spiller's failure to present best available evidence 42

IV. Objections of the carriers before Commission and court 44

Objections before Commission 46

Objections before trial court 65

V. Commissioner doubted value of Spiller's evidence 76

VI. Should the award have been made to the shipper or to the assignee 83

Second. Spiller as assignee is not within the provisions of the Act to Regulate Commerce, and the Interstate Commerce Commission was without jurisdiction to entertain a claim preferred by him 90

Third. The brief for plaintiff in error contains nothing countervailing the foregoing propositions 106

I. 107

II. 109

As to admissions 110

As to failure to object 113

III. 116

IV. Spiller's authorities analyzed 118

V. Miscellaneous comment on Spiller's brief 129

Conclusion 133

Table of Cases.

American & English Annotated Cases, Vol. 4, p. 304 131
Anadarko, etc. v. Atchison, etc., 20 I. C. C., 43 (49) 37
Atchison, etc. v. Spiller, 249 Federal, 677 10
Blatch v. Archer, 1 Cowper, 66 42
Brown Bros. Mfg. Co. v. C. B. & Q. R. R. Co., 21 I. C. C., 513 41
Bryant v. Lazarus, 225 Mo., 606; 139 S. W., 558 (560) 43
Chamberlayne on Evidence, Sec. 461 32
Chamberlayne on Evidence, Sec. 1075 42
Commercial Club of Omaha v. Anderson & Saline River Ry. Co. *et al.*, 27 I. C. C. 302 (310-311) 41
5 Corpus Juris, 1019 39
5 Corpus Juris, 1020 39
17 Cyc., p. 106 ..... 120, 122
17 Cyc., p. 564 ..... 120, 122
Davis v. Railroad Company, 25 Federal, 786 129
Decker v. Minneapolis, etc., 38 I. C. C., 228 39
Edmunds v. Illinois Central R. Co., 80 Federal, 78 129
Englebretson v. Industrial Accident Commission, 170 Cal., 793; 151 Pacific, 421 37
Erwin v. United States, 97 U. S., 392 127
Erwin v. Illinois Central, 80 Federal, 78 128
Florida East Coast, etc. v. United States, 234 U. S., 167 (188) 37
Fulgham v. Midland Valley R. Co., 167 Federal, 660 98
Gregory v. Dodge, 14 Wend., 593 (617) 120, 122
Griffing *et al.* v. Chicago & North Western Ry. Co., 32 I. C. C., 283 (286) 39
Hygienic, etc. v. Chicago & North Western Ry. Co., 37 I. C. C., 384 .. 39
Interstate Commerce Commission v. Baird, 194 U. S., 25 (44) ..118, 120
Interstate Commerce Commission v. Louisville & Nashville, etc., 227 U. S., 88 ..... 31, 38, 120
Interstate Commerce Commission v. Louisville & Nashville, etc., 227 U. S., 93 ..... 118, 120
Interstate Commerce Commission v. C. R. I. & P., 218 U. S., 88 (110) 118, 119

Kane v. Missouri Pacific, etc., 251 Mo., 13; 157 S. W., 644....76, 120, 121
Kansas City Southern v. Leslie, 238 U. S., 599..... 97
Kirby v. Tallmadge, 160 U. S., 379..... 44
Louisville & Nashville R. R. v. Finn, 235 U. S., 601 (606)...118, 119, 120
Mathis v. O'Neal, 94 Mo., 527.....120, 122
Meeker v. Lehigh Valley, etc., 236 U. S., 412 (430)..... 67
Michigan Central R. Co. *et al.* v. Elliott, 256 Fed. 18..... 72
Nicola, etc. v. Louisville, etc., 14 I. C. C., 199..... 38
Olden & Elliott v. Seaboard Air Line Railway, *et al.*, 37 I. C. C., 345 39
Parsons v. C. & N. W. Ry., 167 U. S., 447.....96, 124
Penny v. New Orleans, etc., 125 La., 962; 66 Southern, 313..... 94
Philadelphia & Reading Railway v. United States, 240 U. S., 334 (341)..... 36
Phillips v. Grand Trunk Railway, 236 U. S., 662 (667)..... 101
Queen v. Hepburn, 7 Cranch., 290..... 69
Robinson Co. v. American Express Co. *et al.*, 38 I. C. C., 733 (735) 74
Robinson v. Union Central, etc., 144 Federal, 1005 (1010)..... 44
Rucker v. Bolles, 80 Federal, 504..... 128
16 Stat. L., 213..... 100
26 Stat. L., 1100..... 99
29 Stat. L., 685..... 99
30 Stat. L., 915..... 98
Sensenig v. Pennsylvania, etc., 78 Atl., 91 (92)..... 96
Southern Pacific Company *et al* v. Darnell-Taenzer Lumber Company *et al.*, 245 U. S., 531.....10, 103
Southern Railway Company v. Tift, 206 U. S., 428 (436)..... 101
St. Louis, etc. v. Samuels & Company, 211 Federal, 588 (593)..... 131
Sutherland Statutory Construction, Section 371..... 94
Texas & Pacific, etc. v. Abilene, etc., 204 U. S., 426 (442).....93, 128
Weber v. Chicago, etc., 69 Kans., 611; 77 Pac., 532..... 94
Wells Lumber Co. v. C. M. & St. P. Ry. Co., 38 I. C. C., 464 (469).. 39
1 Wigmore on Evidence, Sec. 18..... 120
1 Wigmore on Evidence, Sec. 285..... 43
1 Wigmore on Evidence, Sec. 290..... 32
1 Wigmore on Evidence, Sec. 586.....120, 122
Wolf v. Edmundson, 240 Federal, 53..... 120

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1919.

No. 137.
E. B. Spiller, Plaintiff in Error,
vs.
The Atchison, Topeka & Santa Fe Railway Company.

No. 138.
E. B. Spiller, Plaintiff in Error,
vs.
Chicago & Eastern Illinois Railroad Company.

No. 139.
E. B. Spiller, Plaintiff in Error,
vs.
Chicago & Alton Railroad Company.

No. 140.
E. B. Spiller, Plaintiff in Error,
vs.
The Missouri Pacific Railway Company.

No. 141.
E. B. Spiller, Plaintiff in Error,
vs.
St. Louis, Iron Mountain & Southern Railway Company.

No. 142.
E. B. Spiller, Plaintiff in Error,
vs.
St. Louis & San Francisco Railroad Company.

No. 143.
E. B. Spiller, Plaintiff in Error,
vs.
Chicago, Rock Island & Pacific Railway Company.

No. 144.
E. B. Spiller, Plaintiff in Error,
vs.
Illinois Central Railroad Company.

No. 145.
E. B. Spiller, Plaintiff in Error,
vs.
Missouri, Kansas & Texas Railway Company.

BRIEF FOR DEFENDANTS IN ERROR.

STATEMENT OF THE CASE.

Note: Except between top pages 197 and 307, of which page citations are made, references to the record relate to the folios.

In this case the plaintiff in error seeks the reversal of a unanimous decision of the Circuit Court of Appeals

of the Eighth Circuit reversing the judgment of the District Court of the United States for the Western District of Missouri for $181,190.87 upon an award of reparation made by the Interstate Commerce Commission.

It was claimed before the Commission that many persons shipped cattle over the lines of defendants' railways, but no shipper, or any person in his behalf, took the witness stand to show that. It was claimed that those shippers were damaged by the exaction of unreasonable freight rates, but there was no proof by any shipper or by anybody else that any claimant ever paid a rate. It was claimed that the shippers made assignments of their claims for damages to Spiller, but neither Spiller nor any shipper gave testimony to that effect, nor was competent evidence offered by anybody else. Neither Spiller nor anybody else appeared to testify that he had paid even one penny for the claims—on the contrary, it was stated by his counsel that he had no personal interest in them.

On such a record the Interstate Commerce Commission awarded him $147,851.

The United States Circuit Court of Appeals for the Eighth Circuit, in an opinion exhaustively examining the evidence (pp. 667-697), reversed the judgment of the United States District Court for the Western District of Missouri sustaining the award of the Commission.

That court (Sanborn, Carland and Booth, JJ.) held unanimously on October 29, 1917, that the order of the Interstate Commerce Commission of January 12, 1914, in a proceeding brought by the Cattle Raisers Association of Texas, awarding reparation to E. B. Spiller, alleged assignee of shippers of live stock, was without evidence to support it.

After a most minute examination of the record, made

necessary by the assignment of error by the carriers that the Commission was without evidence to sustain its finding and award, the court not only found generally that there was no evidence before the Commission to support its order and no evidence before the United States District Court at Kansas City to support its judgment, but it also found (f. 426) that the testimony offered before the Commission "was the worst kind of hearsay."

The Circuit Court of Appeals found (246 Federal, 1; folio 421) that while the Interstate Commerce Commission "should not be too narrowly constrained by technical rules as to the admissibility of proof, nor hampered by those narrow rules which prevail in trials at common law," yet the holdings of the Supreme Court have been "'that administrative orders, *quasi* judicial in character, are void if a hearing was denied; if that granted was inadequate or manifestly unfair; if the finding was contrary to the indisputable character of the evidence,'" borrowing the language of this court (227 U. S., 93, 186) in the Louisville & Nashville case.

Quoting again that "a finding without evidence is beyond the power of the Commission," and that "the more liberal the practice in admitting testimony the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended," the Circuit Court of Appeals made a thorough-going examination of the record under the assignment of the carriers—a requested (f. 60) declaration of law overruled (f. 388) by the trial court—that "the findings of fact and award of reparation herein by the Interstate Commerce Commission are wholly unsupported by any legal or competent evidence."

That search brought the Circuit Court of Appeals to the following conclusions regarding the evidence (f. 424):

> "There is no warrant for claiming that the admission that certain freight moved and the freight thereon was collected made a case upon which the Commission could award damages against the carriers, and these admissions are all the legitimate proof upon which the order of the Commission must stand or fall."

Again:

> "It was, therefore, necessary for the plaintiff to show who the owner was, that he paid the unlawful rate and was damaged thereby, and the extent thereof."

Quoting the finding of the Commission regarding the commercial transaction and the payment of freight by the owner, the Circuit Court of Appeals said (f. 425):

> "There was no proof before the Commission that a single owner of cattle mentioned in Appendix A shipped cattle over the carriers' lines and paid the unlawful rate."

Referring to Spiller as not having been a shipper and as claiming by assignment, the Circuit Court of Appeals said (f. 426):

> "It was, therefore, necessary for him to show such an assignment of the claims as would vest him with the legal title thereto if the award was to be made to him. The record shows that some of the claims if assigned at all, were assigned to Crowley, others to Spiller, others still, and it did not appear which ones, were simply placed with the Cattle Raisers' Association for collection, and it stands undisputed that whether assigned or placed in the hands of the Association for collection, the only purpose of the assignment or placing for collection was to enable the Cattle Raisers' Association to handle the claims for reparation. On the undisputed evidence, therefore, the legal title to the claims for reparation never vested in Spiller and the Commission was wholly without authority to cause the order of reparation to be made to him. He was not a shipper or owner of cattle and of course was not injured through any act

of the carriers. The Commissioner conducting the hearing was much in doubt himself as to whom the order of reparation should be made and the report of the Commission states that it was made to Spiller because his counsel so requested, being willing to take a chance."

On the same subject (f. 427):

"Our conclusion is that there was not sufficient evidence to support the finding of the Commission that the claims had been legally assigned to Spiller; and that, conceding that there was, the evidence showed that the purpose of the assignment was not such as to vest the legal title of the claims in Spiller so as to authorize the Commission to make the award of damages to him."

Finally on the sufficiency of the record (f. 431), the court said (italics ours):

"Counsel for the carriers persistently during the reparation hearings contended that there was no evidence that any owner of cattle had been damaged or that the persons named in the tabulated statement were the owners, or if so that they had paid the unlawful rate. *Upon the contested propositions they conceded nothing.* In view of what we have said we are of the opinion that the findings and order of the Commission were not sustained by the evidence. This being so, the *prima facie* case made by their introduction at the trial below was destroyed when the evidence upon which the findings and order were based appeared. The trial court, therefore, erred in refusing to declare the law to be that upon all the evidence plaintiff was not entitled to recover against any or all of the defendants."

The award of the Commission against ten railway companies aggregated $107,702.35, and with $40,149 as interest the total award was $147,851.35.

The actions to recover on the award were brought by Spiller in the United States District Court at Kansas City, and on August 16, 1916, that court, after dismissal as to one of the defendants, entered judgments (f. 45) which, with interest and attorney's fee of 10 per cent

in each instance, aggregated $181,190.87, made up as follows:

The Atchison, Topeka and Santa Fe Railway Company,	$43,174.23	
Attorneys' fees,	4,317.42	
		$47,491.65
Chicago & Eastern Illinois Railroad,	2,063.42	
Attorneys' fees,	206.34	
		2,269.76
Chicago & Alton Railroad,	859.70	
Attorneys' fees,	85.97	
		945.67
Missouri Pacific Railway,	350.59	
Attorneys' fees,	35.05	
		385.64
St. Louis, Iron Mountain & Southern Railway,	4,165.95	
Attorneys' fees,	416.59	
		4,582.54
St. Louis-San Francisco Railway Company,	30,212.31	
Attorneys' fees,	3,021.23	
		33,233.54
Chicago, Rock Island & Pacific Railway,	20,340.05	
Attorneys' fees,	2,034.00	
		22,374.05
Illinois Central Railroad,	1,788.41	
Attorneys' fees,	178.84	
		1,967.25
Missouri, Kansas & Texas Railway Company,	61,764.34	
Attorneys' fees,	6,176.43	
		67,940.77
		$181,190.87

The carriers took the case to the United States Circuit Court of Appeals upon the specified errors (f. 105) that the United States District Court erred in refusing declarations of law requested by the carriers that upon all evidence and all the pleadings in the case plaintiff was not entitled to recover against any or all of the defendants; that the Interstate Commerce Commission was without jurisdiction to entertain claims filed by Spiller as assignee and by one Crowley, who had assigned to Spiller, or to make an award of reparation thereon; that the Commission did not have before it legal or competent evidence of any assignment by any shipper to Spiller or to Crowley, and that, therefore, its finding of an assignment was unsupported by the record; that the Commission had no evidence before it of injury done to Spiller or his alleged assignors by the carriers, or of a pecuniary or other damage sustained by Spiller on account of anything done or omitted to be done in contravention of the Act to Regulate Commerce, for which reason the finding and the award were contrary to law; that the Commission had before it no evidence of the payment of freight by any individual and that the finding and award of damages were therefore unsupported; that the Commission erred in not granting the motion of the defendants to dismiss Spiller's claim for reparation for failure of proof of damage; that the Commission exceeded its statutory power in making an order of reparation retroactive for a term of more than two years preceding the date of its award and order, and also in prescribing a maximum rate to be charged for the term of two years after said date, because the Act to Regulate Commerce empowers it to prescribe a rate for two years for the future only; that the evidence before the court, which included all the

evidence before the Interstate Commerce Commission, was insufficient in law to warrant or support a judgment for the plaintiff; that it was error for the District Court to hold that the Commission had evidence before it to support an award of reparation to Spiller as assignee; that it was error for the District Court to hold, in the absence of evidence of any character showing or tending to show that the plaintiff or his alleged assignor had in fact paid the rate condemned or had suffered any pecuniary damage by reason of the payment of the rate, that the Commission had power to make an award of reparation; and that the District Court erred in rendering judgment against the carriers.

On October 29, 1917, the Circuit Court of Appeals sustained those propositions of law (folio 400 *et seq.*).

The court, commenting (f. 425) on the insufficiency of the evidence, said (italics ours):

> "The evidence in our opinion wholly fails to show who owned the cattle shipped, or who paid the freight. There was no proof that the consignors mentioned in the tabulated statement, now called Appendix 'A,' were the owners of the cattle, and it appeared beyond dispute by the testimony of the only witness sworn, that the cattle were not in all cases shipped in the name of the owner, but in the name of the caretaker. *The extent to which the admissions of the carriers carried the plaintiff's case is not disputed.* The only other proof that by any pretense may be claimed to show that any owner of cattle shipped them over the carriers' lines and paid the unlawful rate is the testimony of the witness Williams, who testified that during four or five years he had obtained from the commission houses and other sources 'stuff,' as he calls it, showing the shipment of cattle, not by the owner, and therefore damaged by the payment of the unlawful rate, but simply that a certain person shipped cattle.
>
> Of course this testimony was the worst kind of hearsay, but counsel claims that it was unobjected

to and therefore in an appellate court the objection that it was hearsay cannot be made."

Mentioning the fact that proceedings before the Commission are informal and that counsel "are not required to preserve and protect their rights with the watchful nicety that would be required in courts of justice," and pointing out, moreover, that "the record shows in many places where counsel asserted that there was an entire failure of proof and demanded that the proceedings should be dismissed, so that it cannot be said that counsel acquiesced in the proposition that the tabulated statement, together with the admissions of the carriers proved a case for damages against them," the court concluded (f. 426):

> "But the question before us is whether there was any substantial evidence before the Commission to justify its order. Such an inquiry permits us to consider the character of the evidence introduced to support the order."

Finally, the Circuit Court of Appeals held that the *prima facie* case made by the plaintiff when the order and award of the Commission were introduced in the District Court "was destroyed when the evidence upon which the findings and order were based appeared"—that is, the record before the Commission which the carriers put in evidence—and that, therefore, the trial court "erred in refusing to declare the law to be that upon all the evidence plaintiff was not entitled to recover against any or all of the defendants."

Following that decision of the Circuit Court of Appeals the defendant in error in that court filed a petition for rehearing (pp. 411-452) in which there were urged upon the court all the propositions and contentions that are embodied in the assignment of errors (p.

455) at bar. This case was, therefore, fully heard twice by the Circuit Court of Appeals.

On March 11, 1918, following the decision of this court in *Southern Pacific Company et al.* v. *Darnell Taenzer Lumber Co. et al.* (Jan. 21, 1918), 245 U. S., 531, the Circuit Court of Appeals, in denying the motion of Spiller for rehearing (f. 493), said that it resulted from the decision in the Darnell-Taenzer case "that anything said in the opinion of this court contrary to the above decision is overruled." But it concluded:

> "Our judgment, however, was not based alone upon our opinion as to what was the lawful measure of damages, but on other grounds mentioned in the opinion to which we still adhere. The motion for a rehearing is, therefore, denied."
>
> *Atchison, etc.*, v. *Spiller*, 249 Fed., 677.

Thereupon a petition for a writ of error from the Supreme Court of the United States, with assignments of error, was filed by Spiller in each of the nine cases which had been heard together in the Circuit Court of Appeals.

In addition to the writs of error there were filed petitions for *certiorari*. These were, on October 21, 1918, postponed by order of the Supreme Court to be presented along with the writs of error.

BRIEF OF THE ARGUMENT.

First.

THERE WAS NO EVIDENCE BEFORE THE INTERSTATE COMMERCE COMMISSION JUSTIFYING AN AWARD OF REPARATION OR DAMAGES TO E. B. SPILLER OR TO ANYBODY ELSE.

The first assignment of plaintiff in error (f. 496) is that the Circuit Court of Appeals erred in holding that the award of the Commission was unsupported by the evidence.

Under this heading we purpose to show as follows:

1. That the best or primary evidence was repeatedly shown to have been available to complainant for use before the Commission, but that complainant, while often promising to produce it, never did.

2. That complainant, instead of producing the best evidence, which was easily available, and often promised, employed what the Circuit Court of Appeals aptly termed "the worst kind of hearsay."

3. That the carriers made objections to the matter which was being introduced and made motions to dismiss for want of proof.

4. That from first to last Commissioner Prouty doubted that the record which was being made would support an award of reparation.

5. That the trial of the case proceeded upon the theory that an award of reparation would be made to each shipper, but that near the end, without any legal proof of assignments from shippers or of interest in Spiller, an award was made to Spiller as assignee, a stranger to the shipping contracts.

We shall consider in the light of the record the foregoing points in the order stated.

I.

BEST EVIDENCE WAS AVAILABLE TO SPILLER, BUT IT WAS NOT PRODUCED.

We specially request that through the following examination of the record before the Commission it be kept in mind that it frequently appears that the complainant before the Commission at the hearings on reparation could have produced—and that he promised to produce—absolute evidence as to the origin and ownership of each carload of cattle, of the name of the shipper who paid the freight, and of the amount of freight actually borne by him—but that he did not keep his promise to do so.

At the opening of the hearing before the Commission on reparation it was stated by Mr. Cowan, counsel for complainant, the Cattle Raisers Association of Texas, (p. 202) that "ordinarily the cattle shipper keeps no definite sort of books; he depends on his commission company to do that."

A little later, coming more definitely to the details of proof, it was disclosed (p. 208) that the books of the commission men at the points of destination would afford absolute proof of who owned the stock, who shipped it, and who paid and bore the freight.

Under questioning by Commissioner Prouty the assistant secretary of the Cattle Raisers Association, Mr. Williams, had put in about seven pages of the printed record regarding what (p. 207) "I understand," and about (p. 206) "the way the stuff was given to me," and that many of the shipments were billed in the

names of caretakers instead of the names of owners, and that (p. 207) "that was the way the information was furnished to me." At the very outset the Commissioner saw that the proof tendered was wholly worthless. We are to discuss later the suggestion of the trial court (f. 386), that the carriers "acquiesced" in the reception of worthless testimony and that they did not interpose the running fire of objections which is sometimes heard in court contests in the presence of juries; but the following makes clear that at the threshold of the hearing on reparation the Commissioner himself interposed objections enough not only, but also brought out the fact that primary evidence was known by counsel for complainant to be available. Further, the Commissioner secured the promise that it would later be produced. We quote (p. 208, italics ours*):

> "Commissioner Prouty: Now, Mr. Cowan, you haven't in your possession at the present time the expense bills which were given when these cars were delivered and the freight paid?
>
> Mr. Cowan: We have not, and we never did have. The commission companies take these scale tickets and expense bills and they make up their account sales and do not undertake to file away and keep these things. It is simply a memorandum from which they make up their books and the transaction is closed when they send the account sales and transmit the money to the shipper.
>
> Commissioner Prouty: Now, just what would the commission agent be able to testify to from his books? Suppose he was to come before some examiner of the Commission and produce his books, just what could he testify to?
>
> Mr. Cowan: The most that I know is that he could testify they kept their books correctly, that this is a regular entry made at the time of the transaction—

*The italics in the matter quoted from the record are ours.

Commissioner Prouty: *What do his books show?*

Mr. Cowan: *His books will show the owner of the cattle, the amount of the freight.*

Commissioner Prouty: *In this case would the books show that Mr. Aikens was the owner of these cattle?*

Mr. Cowan: *Undoubtedly.*"

Again, as to the books of the commission company being the best evidence, Mr. Williams, the only witness for complainant, the assistant secretary of the Cattle Raisers Association, made it clear that the evidence required was contained in those books (p. 209):

"Commissioner Prouty: But I was trying to see what you would be able to show without going into the books of the railroad company.

Mr. Williams: Here is a copy of an account sales which will show you something of their record.

Mr. Cowan: Here is a copy of an account sales that indicates what their records are. That of course is made up from the books of the commission company after they have made their entries, as I understand it, from the scale tickets.

Mr. Williams: That particular company keeps for their record a copy of that, the original of which is given to the shipper. *You see there that is complete information about the shipment, the point of origin, the freight paid, and each item is separated there.*

Commissioner Prouty: Well, there isn't anything here which would show any of the details of the shipment. This would simply show that this commission firm sold on account of Mr. Coleman, for instance, a certain number of cattle.

Mr. Williams: *Yes; you will find there that that shows also the delivering railroad, the freight paid, the weight, the point of origin, and so forth.*

Commissioner Prouty: You are probably right, but just point out those different things to me."

The following shows that the commission company which handled the live stock at point of destination and

settled with the owner should have been the witness, Commissioner Prouty speaking (p. 242):

> "When you are ready to begin, I will come here myself. I want to look at the books of account and see whether in my opinion they make out a case. If they do not make out a case we will have to go to work in some other way, I suppose. I think you are entitled to the information in some way."

There, during the first of the three hearings on reparation, the Commissioner indicated to counsel for defendants that information would be gathered from the books containing primary evidence. The promise there made to look into the books of the commission merchants never was carried out either by the Commissioner or by an examiner.

Commissioner Prouty not only recognized that the evidence at first offered through the witness Williams was of no probative value at all, but as a lawyer he saw clearly that there must be proof made that some definite person paid the freight and sustained loss. Asked by the Commissioner regarding proof, counsel for the complainant said (p. 214):

> "Mr. Cowan: The most we can possibly furnish, Your Honor, is statements made up by these commission companies who were the consignees who paid the money.
>
> Commissioner Prouty: No, it appears you can furnish more than that, if Mr. Norton's statement is correct, because he says if you desire you can obtain a duplicate of the paper you have destroyed. *You had a paper which would have showed all these facts. You have destroyed that paper.* Now, he says you can, if you desire, obtain a duplicate of that paper. Whether that may be necessary or you think it is necessary, is another matter.
>
> Mr. Cowan: I cannot understand why *if* we paid the freight and have used the minimum carload—
>
> Commissioner Prouty: You may proceed to prove that you have paid the freight."

Later we shall see that counsel for complainant positively declined to produce primary evidence.

The live stock agent of The Atchison, Topeka & Santa Fe Railway Company, interrogated by Commissioner Prouty (p. 215), made it clear that when it comes to presenting claims for lost cattle or injured cattle or for any other damage the commission merchant who deals with the owner backs up his claim with proof—the absolute proof which the complainant before the Commission admitted was available but which he declined to produce:

> "Commissioner Prouty: Is it your idea if we took these statements and asked the stockyards company to identify these shipments and furnish the unloading tickets that they would be willing to do that?
>
> Mr. Brooks: I think they would do that, but I think they would do better if they acted upon the specific records of the commission company because they could give more specific data.
>
> Commissioner Prouty: What makes you think so?
>
> Mr. Brooks: Take our case as an example, this account sales and slip represents a claim for loss and damage filed against the railroad company, and the commission company in supporting its claim against the railroad submits this slip as well as the unloading certificates."

Counsel for complainant himself brought out the fact that it was within his power to show who shipped the cattle, who owned them, and who paid the freight (p. 217):

> "Mr. Cowan: Have you examined the books and records of any of the commission companies at Kansas City and St. Louis to ascertain the facts as to whether or not they keep a record *showing the consignors and themselves as the consignee*, the date of shipment, the number of cars and *the amount of freight paid* as reflected in the compilation which you have made?
>
> Mr. Williams: Yes, sir, I have."

Information like the foregoing, coupled with the statement of the Commissioner previously quoted, that he would have the books of the commission merchants examined, amounted to an undertaking by complainant to produce proof from primary sources, and counsel for the carriers would not have been open to criticism had they never raised any objection at all. But as the Circuit Court of Appeals said (f. 425), "the record shows in many places where counsel asserted that there was an entire failure of proof and demanded that the proceedings should be dismissed."

In addition to the statement of Commissioner Prouty, previously quoted, that he would come to Chicago himself (p. 242) and look at the books of the commission men, counsel for complainant (p. 221), early in the first of the three hearings on reparation, conceded that it was necessary that he subsequently produce primary evidence to show the particular individual who shipped the carload of cattle, whether he in fact ultimately bore the freight, and if he did, how much it was:

> "Commissioner Prouty: Now, you desire to file in addition to that a statement like the one Mr. Williams showed us this morning?
>
> Mr. Cowan: Yes.
>
> Commissioner Prouty: For each individual shipper?
>
> Mr. Cowan: Yes.
>
> Commissioner Prouty: Very well.
>
> Mr. Cowan: The only other evidence we want to offer would be the commission company's agent to show they keep correct books and that these are correct statements."

Following a statement of counsel for the carriers (p. 225) that "I think the evidence offered amounts to a failure of proof and I should like to make a motion that the case be dismissed on that account," Commissioner Prouty

recognized at the end of the first hearing that complainant had exhibited nothing to counsel for defendants in the way of proof which it was their right to see—whether they made objection or not. He further promised counsel for the carriers that the sources of primary evidence would be looked into by an examiner of the Commission and something like accuracy reached as to whether the carloads had ever moved at all, as to who owned them, as to whether the owners ultimately bore the freight, and as to how much, if any, they were damaged (p. 225):

> "Commissioner Prouty: * * * It rather impresses me, although I do not desire to express any final opinion, that the books of these commission merchants are evidence tending to show the amount of freight paid on these shipments. If those books when they are exhibited show the name of the man who shipped the cattle, show the number or the amount of cattle shipped, the amount of freight paid and the amount by which that freight exceeded the rate which the Commission held to be reasonable, if those books show those facts in a satisfactory way it seems to me that they would be competent proof to substantiate that fact.
>
> Now, under the holdings of the Commission, when Mr. Cowan shows that one of these shippers made a shipment and paid the freight we hold that that makes out so far as he is concerned a cause of action, because we hold that the man who has paid the excessive freight is entitled to the reparation without showing any special damage beyond the fact that he has paid the excessive rate. My present thought is therefore that if Mr. Cowan desires and if you insisted upon it and I think it would be entirely within your rights and within the proprieties because you are not obliged to pay these claims without some evidence that they are due, I should allow an examiner to sit down and examine these books of account or allow such an examination of the accounts as might convince you and the Commission that these several statements were correct."

During a recess of the first hearing on reparation at Chicago counsel for the complainant, at the direction of the Commissioner, went out to the stockyards and ascertained that the best evidence was obtainable from the books of the commission house (p. 230):

"Commissioner Prouty: With regard now, gentlemen, to the Cattle Raisers Case, Number 732, Mr. Cowan, what did you ascertain at the stockyards? What further have you to say?

Mr. Cowan: Mr. Davis, Mr. Williams and I went out to the stockyards and examined the books of Evans-Snider-Buel Company and Clay, Robinson & Company. *We found they have very complete records here. The complete data with respect to shipments is contained on the commission company's books.*"

But that complete primary evidence never was offered by counsel for the complainant, who refused to go to the trouble of producing it.

At the beginning of the second day of the first hearing on reparation the Commissioner again gave counsel for the carriers to understand that the true facts would be produced from the books of the commission companies (p. 232):

"Commissioner Prouty: Gentlemen, I was about to make this suggestion: The Commission proposes to commit this case to Mr. Davis as an examiner of the Commission when we get to the point where we know exactly what is to be done for the purpose of making any examination of the books which may be necessary. Now, it occurred to me that he could do his work so far as it was necessary for him to do it, much more intelligently and much more expeditiously in connection with the books of the companies, both the commission merchants and the railroads, and with the assistance of the railroads and the commission merchants. My thought suggests that the complainant should furnish a man and the railroads should furnish a man and that these two men with

Mr. Davis should go to Kansas City or St. Louis or here in Chicago and check up these different statements, beginning with the books of the commission men at the stockyards and arriving at sufficient facts so that the defendants can make any further check which they desire. The first thing is to identify the shipments. Now, what do you say, Mr. Norton, to some such proposition as that?

Mr. Norton: Well, that sounds to me like asking us to get busy and go to the trouble and expense of proving the case against us. I don't think it right that we should.

Commissioner Prouty: Neither do I, but you want to know in the end whether these shipments have been made."

And the Commissioner felt convinced that the books should be brought in and exhibited by witnesses (p. 235):

"Mr. Cowan: I suggest that Mr. Davis or some other examiner of the Commission be appointed to take these claims which we propose to file here and to take the evidence of the bookkeepers of the commission companies to show that these shipments were made and the freight was paid. Now, that is enough.

Commissioner Prouty: *I think the books themselves must be produced.*"

Counsel for the carriers called attention to the lack of probative force in the hearsay and incompetent matter that was being produced and Commissioner Prouty indicated clearly that he would require the best evidence (p. 236):

"Mr. Norton: I am not throwing any bricks either in your way or in Mr. Cowan's way, but the propo-
Mr. Cowan a certain amount of money.
sition here is that we come in and prove that we owe

Commissioner Prouty: No, the proposition is this; that from the record kept by your company and these commission companies we ascertain what shipments of live stock moved from various points in Texas to these various markets and who made those shipments. That is the proposition.

Mr. Norton: This matter which has been submitted to us has been submitted to our auditors and they say they cannot find the car numbers. For instance, out of Amarillo station we may send out several trainloads of live stock in a single day and here is John Smith has a single car from Amarillo or Kansas City.

Commissioner Prouty: Now, my proposition is that Mr. Davis and your man and Mr. Cowan's man go down to Kansas City and identify that car."

Counsel for the carriers pointed out at the first of the three hearings on reparation (p. 237) that the "stuff" (p. 206), as the witness Williams aptly designated his tabulations, and his "understanding" (p. 207) were not sufficient upon which to predicate an order for a large sum of money and that primary evidence should be produced. But counsel for complainant said that he did not *have* to produce it (p. 237):

"Mr. Norton: He hadn't declined to produce the information. Have you any objection to producing it?

Mr. Cowan: *I don't have to produce it.*

Mr. Norton: Knowing this gentleman out here at the stockyards has all this information, why haven't you selected it and presented it here in a concise form so we can check it?

Mr. Cowan: *For the simple reason I don't have to prove* anything except that we shipped the cattle and paid the freight.

Mr. Norton: I think you do, and *I think it would be unfair, Mr. Commissioner, in view of his statement to require us to go any further. Let him rest.*

Mr. Cowan: *All right.*"

Nothing was ever presented to show that any individual ever owned a carload of cattle, that any individual ever paid a freight rate, or that any individual ever sustained any damage for which an award could be made. The Circuit Court of Appeals read the record to this

effect. This Court must read it so, we respectfully submit.

Counsel for the complainant, evidently realizing the weakness of what had been offered, later asked the Commissioner for an examiner to take testimony regarding the books of the commission companies (p. 240):

> "Mr. Norton: I showed the chairman yesterday the information which goes into the hands of the commission men.
>
> Commissioner Prouty: Mr. Cowan, would it in your judgment be possible now to file the statements which you have prepared?
>
> Mr. Cowan: Yes, I wish to file these statements and then *I wish to ask the Commission to furnish an examiner to take the evidence of the commission companies.*"

There, near the close of the second day of the first hearing on reparation, counsel for defendants were again apprised of the purpose of complainant to produce primary evidence.

And at the same time the Commissioner indicated that he would look at the books himself and determine their probative value (p. 241):

> "Commissioner Prouty: * * * I think, Mr. Cowan, I have never yet seen the books of these commission men, I do not know what they show, but I would be glad to see those books myself in one instance, so I may form an opinion as to whether they do justify the Commission in entering an order. I will continue this case to such time as you think will suffice for the filing of these statements, and then I will endeavor to come either to Chicago or to Kansas City myself for the purpose of looking at one set of books, and determining whether it is worth while to examine the balance."

Referring to some other checking up which counsel for the complainant desired to do, Commissioner Prouty said (p. 242):

"When you are ready to begin, I will come here myself. I want to look at the books of account and see whether in my opinion they make out a case. If they do not make out a case we will have to go to work in some other way, I suppose. I think you are entitled to the information in some way."

And, finally, the second hearing was adjourned with the understanding (never effectuated) that the best evidence would be produced (p. 243):

"Commissioner Prouty: Then this case may stand adjourned until the third Monday in January, with the understanding that at that time the books of some one of these commission merchants will be examined. I suppose the books of one company are typical of all, and if it seems to the Commission that they make out the case of the complainants then we will allow an examiner to go ahead and examine all the books. Otherwise we shall have to adopt some different means of ascertaining the facts."

Near the end of the first hearing, Commissioner Prouty brought counsel for Spiller back to the subject of primary evidence and said (p. 243) that his opinion was that "you should bring the books of some one commission firm into court here" or at Kansas City, and asked whether counsel for complainant would prefer to adjourn to Kansas City (p. 244):

"Mr. Cowan: *Oh, I think any one of the Kansas City firms will bring their books up here. I don't think there will be any trouble.* There isn't any question but what the books show that these commission companies on account of their customers paid so much money.

Commissioner Prouty: Do they show the point of origin, that is, do they show from what point the shipment was made?

Mr. Cowan: I am not able to answer that question except that the books out here in the office of Evans, Snider, Buel, and Clay-Robinson do."

At a subsequent hearing in January the Commissioner,

turning to one of the exhibits of complainant for an illustrative case, inquired (p. 254):

> "Commissioner Prouty: Never mind. Evans and Montague, we will say, is the consignee. Now, do you propose to introduce the books of Evans & Montague to show that in the case of that shipment settlement was made with Aaron & Hughes, and the money paid over to Aaron & Hughes?
>
> Mr. Cowan: Yes, the books of the commission company will show that, and that is the source of our information, from those books."

Thus at the second hearing, as well as at the first, counsel conceded that best evidence was available to him. To the direct question by counsel for the railway companies as to whether there would be a hearing at which the contents of the books of the commission houses would be made known the answer of the Commisioner was that (p. 261) "our examiner will be able to state the account against every railroad" after an examination of the books.

Later, counsel for the defendants inquired whether there would be a further hearing so as to require the exhibition of the books of the commission companies (p. 261):

> "Mr. Norton: I will say this, as to this and some other questions you have put, that after Mr. Cowan has made an examination of the books of the commission companies as he proposes to do, there will probably be another hearing, a short one at any rate, before the Commission, to take into account what has been discovered?
>
> Commissioner Prouty: I apprehend that before we make an order there will be some other hearing at which I will be present, but there will very likely be no hearing at which I will attend until our examiner is able to state the account against every railroad."

Near the end of the second hearing it was still the

purpose to have the books of the commission men produced (p. 268:

"Mr. Cowan: I presume that the proof that would be made by Mr. Moore, if he were placed upon the stand, is practically waived. We have the books here.

Commissioner Prouty: We will see whether or not it is waived, but I do not understand they insist upon it now, or rather the suggestion is that the examiner of the Commission may examine these books.

Mr. Norton: He may be well able to do it then and report."

And at the final hearing it was again made clear by complainant that the real evidence was in the possession of the commission houses (p. 274):

"Mr. Cowan: The commission companies are the universal agents for the collection and payment of freight out of the proceeds of cattle shipped to them?

Mr. Williams: They are.

Mr. Cowan: They do not pay any regard to the man who is caretaker of the live stock, but only make their entries in their books against the owners of the cattle?

Mr. Williams: Yes, sir.

Mr. Cowan: They render to the owners when they sell the cattle, an account sales?

Mr. Williams: Yes, sir."

But the case was closed and an order of reparation subsequently made without any attempt by the complainant to place of record the absolute evidence which we have shown to have been so easily within their reach.

The books of the commission houses were not only not produced and explained by a witness, but they were not even looked into by the examiner of the Commission, who, the Commissioner said, would be put at work to ascertain the facts.

Not only did counsel for Spiller write it all over the record that best evidence was easily available to him, but he also brought out with equal clearness that the records of the carriers contained no information as to ownership of anything by any man (p. 215):

> "Mr. Cowan: Now, Mr. Brooks, your billing will show the name of the caretaker?
>
> Mr. Brooks: Yes, sir.
>
> Mr. Cowan: Your billing does not show the name of the owner?
>
> Mr. Brooks: No.
>
> Mr. Cowan: The commission companies' books, however, show the name of the owner?
>
> Mr. Brooks: Yes, sir.
>
> Mr. Cowan: And for whom the freight was paid, and for that reason it seems to me the commission company's books are the ones to show who really paid the freight and if you went and got all your bills they would show the caretaker and not the owner of the cattle."

II.

COMPLAINANT'S EVIDENCE HEARSAY ONLY.

Having shown that it was put of record by the counsel and the witness for complainant that there was easily accessible to them primary evidence of the ownership of the cattle and the amount of freight paid by the individual shipper, we shall now examine the worthless matter upon which an award of reparation was made and orders finally were entered by the Commission aggregating $147,851.35—matter which the Circuit Court of Appeals fitly characterized as "the worst kind of hearsay."

At the opening of the first of the three hearings on reparation, after a long statement of so-called facts by counsel for complainant, Commissioner Prouty took from

the witness Williams one of the tabulations which had been offered and which was afterwards used by the Commission to prepare the order against the carriers shown in the tables from page 108 of the record to 188, inclusive, proceeded (p. 205) as follows:

"Commissioner Prouty: Now looking at this statement, you say J. H. Aikins, Kansas City, Missouri, claimant?

Mr. Williams: Yes, sir.

Commissioner Prouty: Who is J. H. Aikins, stockyards, Kansas City?

Mr. Williams: He is a cattle shipper of quite a little prominence.

Commissioner Prouty: Is he a raiser of cattle or dealer in cattle in Kansas City?

Mr. Williams: *My understanding is that he is a dealer in cattle. I am not sure personally.*

Commissioner Prouty: Do you *understand* that Aikins paid these charges?

Mr. Williams: *I do, yes, sir.*

Commissioner Prouty: He was the man who paid the charges?

Mr. Williams: *That is my understanding,* yes, sir.

Commissioner Prouty: Was he the man who handled the charges *as you understand it?*

Mr. Williams: No. These charges were paid by the commission company by him.

Commissioner Prouty: For him?

Mr. Williams: Yes.

Commissioner Prouty. So these are really his cattle?

Mr. Williams: These are really his cattle; *at least that is the way the stuff was given to me.*"

That testimony and what we are further to present goes to assignment of error I, which is to the effect (f. 496) that the Circuit Court of Appeals erred in holding that there was no proof before the Commission of the ownership of the live stock or as to who paid the freight and was damaged thereby, and that, therefore, the order of reparation was unsupported.

Apparently not being satisfied with the kind of testimony which Mr. Williams had given as his "understanding," Commissioner Prouty took up another shipment (p. 206):

> "Commissioner Prouty: Now, you say William Lewis; you *understand* he was the shipper of the cattle?
>
> Mr. Williams: I understand when a man ships cattle, sometimes in order to get a pass for another man, they *will be billed possibly in the name of the man accompanying them.* Say I was going to accompany a shipment from Fort Worth to Kansas City, they would be billed in my name; but as a matter of fact, the commission company knows they are not my cattle but belong to this other shipper and are billed in my name because I am the caretaker accompanying the cattle.
>
> Commissioner Prouty: Is that same thing done to-day?
>
> Mr. Williams: I understand it is to some extent."

The foregoing shows what more than once appeared, namely, that cattle are shipped in the name of a caretaker so that he may travel as the owner on a drover's pass. As the cattle would be billed in the name of the caretaker and not the owner, of course the railroad billing would not show the owner at all. This makes clear why it was absurd for the complainant to expect the carriers to check up the shipments and show from their records (generally containing names of caretakers) who owned the cattle and who paid the freight. From the data which complainant offered all the carriers willingly checked so far as they could the *movement* and to that extent admitted that the cars were transported and that necessarily freight was collected from somebody. But as to whose cars moved, as to who paid the freight, and as to who, if anybody, was damaged, they carefully and particularly declined to admit anything. They were given to understand repeatedly that the books of the

commission houses containing this information would be produced.

The witness being unable to state whose cattle actually were shown upon the sheet, the Commissioner said (p. 206):

"Commissioner Prouty: You don't know then that Lewis was the consignor who made the shipment?

Mr. Williams: I haven't a copy of that particular statement."

Finally the witness was obliged to admit that all he knew about the matter was hearsay (p. 206):

"Commissioner Prouty: Pass him a copy of that statement so he may have a copy of it. (Document handed witness.)

Mr. Williams: *All I know is that that statement was furnished me* on a form similar to this (indicating). *My understanding is that it was furnished to me on a form something similar to this*, and it was shown on there that he was the shipper, or rather they were shipped in his name."

Referring to some alphabetical designations by which commission companies were shown, by which the general indefiniteness of the matter was increased, the Commissioner inquired (pp. 206-7):

"Commissioner Prouty: But E. E. was a commission company at Kansas City?

Mr. Williams: E. E. was a commission company at Kansas City or some fellow representing the owner of the cattle.

Commissioner Prouty: And *your understanding is that E. E. received the cattle and paid the charges?*

Mr. Williams: *That is my understanding.*

Commissioner Prouty: But that the cattle were owned by Mr. Aikens?

Mr. Williams: *That is my understanding.*

Commissioner Prouty: And the charges were paid on his account?

Mr. Williams: Yes, sir."

Endeavoring to apply the tabulation to a concrete case and to ascertain whether it was of any value in reaching the facts, the Commissioner proceeded and brought out more hearsay and supposition (p. 207):

"Commissioner Prouty: Now, what is there in this statement which would enable the Missouri, Kansas & Texas Railway or the delivering railway —do you know the delivering railway?

Mr. Williams: *I am supposed to know that the M. K. & T. Railway is the delivering line. At least, that was the way the information was furnished me.*

Commissioner Prouty: You show on this statement the originating road, but you do not show the delivering line.

Mr. Williams: The Missouri, Kansas & Texas, delivering line, on the top there above.

Commissioner Prouty: Oh, yes, I see. Then the account is *supposed* in all cases to be against the delivering road?

Mr. Williams: The delivering line, yes, sir.

Commissioner Prouty: So this shipment originated upon the M. K. & T. and was delivered by the Missouri, Kansas & Texas Railroad?

Mr. Williams: *That is my information.*"

The name of the delivering line was necessary, for that carrier collected all the freight and it was the intention of the Commissioner to make the entire award against the company collecting.

As will be seen later, counsel for the carriers made frequent and specific objections to the insufficiency of the foregoing so-called evidence and made motions to dismiss the complaint for failure of proof.

But even had they made no objections at all—even had they been absent from the hearing—it was incumbent upon the Commissioner to see that a record was made from the oral or the documentary evidence of those having primary information. In addition to that, the

defendants were given to understand time after time, as we have already pointed out, that the primary evidence would be produced. With that understanding, why should counsel for defendants have constantly interpolated objections to more or less casual colloquy between the Commissioner and the witness? For we invite special attention to the fact that the record which we have thus far examined and the record which we are now examining was made, not by counsel for the complainant, but by the Commissioner himself. Counsel for defendants could not properly interrupt him. He was making inquiry rather than conducting a formal direct examination to which objections could have been interposed. Naturally counsel for defendants would have refrained from treating the inquiry by the Commissioner as if it were a direct examination by opposing counsel. But they nevertheless repeatedly made it clear that absolute proof must be made by complainant.

On the necessity of the Commission's having before it legal evidence, notwithstanding the liberality of practice before investigating bodies, this court has said:

> "But the more liberal the practice in admitting testimony, the more imperative the obligations to preserve the essential rules of evidence by which rights are asserted or defended. * * * All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal."
>
> *Interstate Commerce Com.* v. *Louisville & N.*, 227 U. S., 88.

What are "the essential rules of evidence" to which the Supreme Court refers? One of them, perhaps the most important, is that hearsay is utterly inadmissible and that primary evidence must in all cases where avail-

able be produced. Therefore, the carriers were entitled to see the books and vouchers of the commission company and to cross-examine the men who made the record.

On the proposition previously stated by us, namely, that the carriers might have stood mute altogether and that the burden would nevertheless have been upon Spiller to produce a chain of facts supporting the order which the Commission made, we quote from a leading writer on the subject of evidence:

> "The opponent whose case is a denial of the other party's affirmation has no burden of persuading the jury; and, therefore, until the burden of producing evidence has shifted, he has no call to bring forward any evidence at all, and may go to the jury trusting solely to the weakness of the first party's evidence."
>
> 1 Wigmore on Evidence, Sec. 290, par. 5.

Yet the trial court, disregarding the foregoing law, and conceding that the carriers insisted upon the best evidence, thought the record good enough "in the absence of rebuttal." We quote (f. 387):

> "It is true that there was much talk of having the books and bookkeepers of the [various] commission companies examined and reported on by an examiner to be appointed by the Commission. It is true that the defendants insisted that this would be the best evidence, at least evidentiary in its character, but the Commissioner felt that upon the entire record the situation sufficiently appeared *in the absence of rebuttal*, and so I think it did for the purposes of a hearing of this nature."

But the trial court evidently was in error as to how the Commissioner felt, as will appear from what the Commissioner himself said upon the subject (p. 213):

> "Mr. Cowan: I expected to prove by Mr. Williams that he took these statements made out by the commission men and has correctly tabulated them

from the information furnished by the commission companies; and I had expected in case the railroad companies required it to produce the bookkeepers or some responsible authority from these commission companies to show they kept their books correctly and made these statements correctly.

Commissioner Prouty: Of course I can express no opinion as to whether that testimony would satisfy the Commission, until I had heard it. *I should have to see the books and hear what the bookkeeper had to say and see how the books were kept before I could have an opinion as to whether the evidence would make out the facts you desire to prove.*"

Moreover, the authorities which we have cited show that the Commission itself has repeatedly held that "for the purpose of a hearing of this nature" the record must be such as would sustain a judgment in a court of law.

Griffing & Co. v. *Chicago, etc.*, 32 I. C. C., 283 (286).

On the obligation of the complainant before the Commission to produce the best evidence (the records of the commission companies) when it had been shown that it was clearly available, we quote from another writer:

> "The presiding judge will insist that, as between a primary and a secondary grade of proof, a party should produce the primary. Where truth is to be ascertained by the use of reason it is intolerable, in point of principle, that anything short of the most probative and conclusive evidence—the 'best' evidence, so-called—should be used in the effort. The dignity of the search demands this concession; the social interests involved require it."
>
> Chamberlayne on Evidence, Sec. 464.

The rules of evidence stated apply to boards and commissions as well as to courts. While the rules of practice before commissions and boards are said to be "liberal," that does not mean that anything will be accepted in lieu of the fact.

This very deficiency was admitted by the trial court (f. 383):

> "It cannot be denied that the proof produced before the Commission was not of that quality which would ordinarily meet the requirements of the rules prevailing in trials at common law. The Commissioner was sensible of this as the hearing proceeded."

It is "quality" that is essential. When the trial court admitted that the record was lacking in quality—that is, in the legal proof of facts—he admitted the case of the defendants. The method and manner of producing evidence may be informal, but, in the language of the Supreme Court in the Louisville case above quoted, that makes "the more imperative the obligations to preserve the essential rules of evidence by which rights are asserted or defended." Consequently, no record on which an award of money is made by a commission or a judgment entered by a court can be at all lacking in quality. Mistaking quality for formality—substance for procedure—the trial court supported the award and held that although "at the end of the hearing the defendants interposed objections as to the sufficiency of the proof" (f. 385), nevertheless they "acquiesced" in something or other "at an earlier stage of the proceedings."

The court, as has been seen, was in error as to "acquiescence."

That the informal rules of procedure before a commission or other investigating body do not release it from ascertaining the *facts* or requiring proof of "quality" is aptly illustrated by a decision of the Supreme Court of California arising under the Workmen's Compensation Law of that state, which carefully provides as to hearings that "in the conduct thereof neither the Industrial Accident Commission nor any member thereof nor any referee appointed thereby shall be bound by the technical

rules of evidence." The act of the legislature further provides that no informality in any proceedings should invalidate any order. Nevertheless, the finding of the Industrial Accident Commission in favor of a claimant was set aside by the Supreme Court because it was based on hearsay evidence—based on the statements of persons who, like the only witness in the case at bar, knew nothing about the matter. The Supreme Court of California said that the general rule against hearsay evidence is not a "technical" rule and was therefore not one of the rules by which the legislature said that the Commission should not be bound.

Discussing the objections to hearsay evidence, which was the kind that the only witness for the complainant before the Interstate Commerce Commission in this case had to offer, the Supreme Court of California quoted from an opinion by Chief Justice Marshall (*Queen* v. *Hepburn*, 7 Cranch, 290, *296) as follows:

> "Its intrinsic weakness, its incompetency to satisfy the mind of the existence of the fact, and the frauds which might be practiced under its cover combine to support the rule that hearsay evidence is totally inadmissible."
>
> *Englebretson* v. *Industrial Accident Commission* (Aug. 7, 1915), 170 Cal., 793; 151 Pac., 421.

The holding of the Supreme Court of the United States in the Louisville & Nashville case, *supra* (227 U. S., 88), was repeated in a case in which it examined the record before the Commission and reversed the trial court for not having suspended by injunction the order of the Commission, that tribunal not having had facts in its record justifying the order made.

> *Florida East Coast, etc.*, v. *United States*, 234 U. S., 167 (188).

In a still later case the Supreme Court reversed the United States District Court for the Eastern District of Pennsylvania, which had refused to suspend an order of the Interstate Commerce Commission running against the Philadelphia & Reading Railway Company and purporting to remove discrimination as to Jersey City. Upon an examination of the record before the Commission, which was clarity itself in comparison with the Commission's record in the case at bar, the Supreme Court of the United States said (italics ours):

> "As the *facts* reported afford no foundation for the Commission's findings, enforcement of the order based thereon must be enjoined."
>
> *Philadelphia & Reading Railway* v. *United States* (Feb. 28, 1916), 240 U. S., 334 (341).

It is to be noticed that in the language quoted the Supreme Court indicated that the Commission must get at some relevant and controlling facts. It is not enough for witnesses to say, as the only witness in the case at bar testified (p. 225 *et seq.*) before the Commission: "I am not sure personally." "That is my understanding, yes, sir." "At least that is the way the stuff was given to me." "All I know is that that statement was furnished to me on a form similar to this (indicating)." "My understanding is that it was furnished to me on a form something similar to this and it was shown on there that he was the shipper, or, rather, they were shipped in his name." "That is my understanding."

It is to be noticed that in the Reading case, *supra*, the order of the Commission was administrative, that is, it directed the removal of a discrimination as to Jersey City. If the Commission in the exercise of its administrative functions is thus held to strict accountability in the ascertainment of facts, how much more closely

should it be confined when it comes to making an award to support a judgment at law for money.

It having been manifest from the first day of the first hearing on reparation that best evidence was available to complainant—that proof of "quality" could have been produced—and counsel for the complainant and the Commissioner himself having frequently conceded that it must be produced, why was a judgment for a fortune entered against defendants on "the worst kind of hearsay"?

Not only was the record before the Commission in total disregard of all rules of evidence, but it also was at variance with the decisions of the Commission itself:

> "It follows that the Commission is not justified in awarding damages in any case except on a basis as certain and definite in law and in fact as is essential to the support of a final judgment or decree requiring the payment of a definite sum of money by one party to another."
>
> *Anadarko, etc.*, v. *Atchison*, 20 I. C. C., 43, 49.

Long before that the Commission had found that awards can be made only to the real party substantially damaged, not to a person never identified before the Commission or the District Court (italics ours):

> "Whatever a court of equity might be able to do and be justified in doing in dealing with the relations between the vendor and vendee of the lumber in reference to the rates or other considerations, the Commission is confined in the making of awards for reparations to the injury or damage sustained *by those who are the real and substantial parties at interest* in the transaction in which such transportation charges have been made. The reparation is due *to the person who has been required to pay the excessive charge* as the price of transportation. It follows that we must, in making orders of reparation in these cases, upon proper proof of the shipments, make such orders in favor of those who paid

the charges as freight charges, or on whose account the same were paid and who were the true owners of the property transported during the period of transportation."

Nicola, etc. v. *Louisville, etc.*, 14 I. C. C., 199.

Why was not the available evidence produced to show "who were the real and substantial parties at interest" and who had really borne the charge? In this case the Commission undertook to do what it was overruled for doing in the Louisville & Nashville case, *supra*—to render a decision without having ascertained what the facts were, upon which procedure the Supreme Court said:

"But the legal effect of evidence is a question of law. A finding without evidence is beyond the power of the Commission. An order based thereon is contrary to law and must in the language of the statute 'be set aside by a court of competent jurisdiction.' 36 Stat., 351."

Interstate, etc., v. *Louisville and Nashville, etc.*, 227 U. S., 88.

In cases almost without number the Commission has refused to award reparation unless it was made clearly to appear of record that the claimant had suffered pecuniary damage. Of course that is the correct rule.

Where the testimony did not purport to state the details of the purchase of any shipment reparation was denied, as the record did not convincingly establish that the complainants ultimately paid the freight. *A finding must rest on a basis as positive and definite in fact as would sustain a judgment in court.*

Griffing & Company v. *Chicago & North Western Railway Company*, 32 I. C. C., 283 (286).

In the foregoing case it was said:

"This testimony does not purport to state the details of the purchase of any shipment upon which reparation is here sought. * * *

> We are without authority under the law to award damages accruing by virtue of a violation of the Act to Regulate Commerce, except upon findings of fact, and these findings must be based upon evidence, both positive and definite."

Reparation was denied where the "damage alleged * * * to have been caused by the rates condemned is not established."

Decker v. *Minneapolis, etc.*, 38 I. C. C., 228.

Where a rate was reduced reparation was denied except as to some few shipments as to which it clearly appeared that the complainant bore the charges.

Oden & Elliott v. *Seaboard Air Line Railway et al.*, 37 I. C. C., 345.

The *party to the contract of carriage* who has been damaged and *finally bears the charges* is the only one entitled to an award of reparation.

Hygienic, etc., v. *Chicago & North Western Railway Company*, 37 I. C. C., 384.

Spiller was not only a stranger to the shipping contracts, but he was also, as the Circuit Court of Appeals found, not vested with title as assignee.

The Commission denied reparation under a complaint alleging that the rates were unreasonable and discriminatory where the witness, like the witness Williams here, knew no facts.

Wells Lumber Company v. *C. M. & St. P. Ry. Co.*, 38 I. C. C., 464 (466).

In a reparation case arising out of shipments of lumber, and decided just a year before the award of reparation was made in this case, where large sums of money were involved, the Commission (Commissioner Prouty delivering the opinion) drew an advance picture of the

case at bar which should have been a guide to him in this case. After going over in detail the "proof" offered in eighteen cases consolidated, the Commission made this almost photographic forecast of our scene before the Commissioner (italics ours):

> "In all of the above cases, commencing with Docket No. 3659, Sub. No. 1 *Robinson Lumber, Veneer & Box Co.*, the defendants moved that the complaints be dismissed for failure of complainants to appear and substantiate their complaints by competent witnesses open to cross-examination, informed of the terms and conditions surrounding the transaction involved in each shipment.
>
> Ample opportunity was given to the parties in these cases to prove by competent witnesses and documentary evidence that the shipments moved as alleged, and that the circumstances and conditions surrounding their transportation, prior and subsequent thereto, were such as entitled the complainants to an award of reparation, if any be made. If the mere submission of an expense bill to the Commission were conclusive evidence that it correctly stated all the facts and disclosed all the circumstances of the whole transaction, a hearing would be an unnecessary expenditure of time and money. The expense bills submitted by a representative of the Yellow Pine Manufacturers' Association on part of complainants herein are unexplained. His connection with complainants is assumed to be that he is employed by an association of which they may be members. He had no knowledge of the shipments and was not a witness, but merely the agent by which the expense bills were filed with the Commission. The submission of expense bills by counsel, at and after the hearing, is not proof of damage.
>
> As is well known, the Commission does not hold itself bound by the technical rules of evidence, but the law requires and the Supreme Court of the United States has decided that our findings must be based on evidence of record. We have here very strongly disputed questions of fact as to whether or not reparation is due and, if so, to whom. The

Commission is entitled to the submission of such facts as will enable it to properly decide the matter. In *Brown Bros. Mfg. Co.* v. *C. B. & Q. R. R. Co.*, 21 I. C. C., 513, 514, we said:

'It is well understood that the Commission does not enforce in proceedings before it the strict rules of evidence which obtain in courts of law, but it is obvious that in order to determine questions of this character the Commission must have before it information of such definite character as will warrant a finding in respect of disputed questions of fact, and ordinarily *this requires the testimony of a witness who is acquainted with the facts which*, from a transportation standpoint, are material to the proceeding.'

In that case, which was dismissed, the witness produced for complainant was not one of its officers or employees, had not seen the shipments on which the complaint was founded, *nor did anyone appear for complainant who had seen the shipments or who possessed first-hand knowledge* of their nature or of other matters relevant or necessary."

Commercial Club of Omaha v. *Anderson & Saline River Ry. Co. et al.*, 27 I. C. C., 302 (310-11).

There the Commission specifically rejected the loose talk by persons like Williams, who knew nothing at all at first hand, and exhibits of no value whatsoever. The Commission mentions in the foregoing that the claimants had "ample opportunity" to get ready to make proof. So it was in our case. Over and over the question of best evidence came up, whereupon the attorney for the complainant emphatically announced that he did not "have to" produce it. Asked why he did not get the exact information which he said was at the stockyards, he answered (p. 257):

"Mr. Cowan: For the simple reason I don't have to prove anything except that we shipped the cattle and paid the freight.

Mr. Norton: I think you do, and I think it would

be unfair, Mr. Commissioner, in view of his statement to require us to go any further. *Let him rest.*

Mr. Cowan: *All right.*"

Of course, he never showed that anybody shipped cattle or paid freight. But he chose to rest. And notwithstanding all the doubts which Commissioner Prouty expressed as to the record which was being written, no attempt was made to add to it by the production at the trial *de novo* in the District Court of the books of the commission houses.

We have shown that the action of the Commission in this case is contrary to its practice in a long series of decisions in hard-fought cases. It was as much a departure from the settled practice of the Commission as it was from the fundamental rule of law that a judgment must be based upon proper evidence.

III.

PRESUMPTION FROM SPILLER'S FAILURE TO PRESENT BEST AVAILABLE EVIDENCE.

As Spiller failed to produce the best evidence, the presumption is that such evidence would have been against him. Thus the order of the Commission is destroyed by the application of one of the most ancient presumptions of the law, which is now generally embodied in our statutes, and which was stated by Lord Mansfield thus:

> "It is certainly a maxim that all evidence is to be weighed according to the proof which it was in the power of one side to have produced and in the power of the other to have contradicted."
>
> *Blatch* v. *Archer*, 1 Cowper, 66.

The latest work on evidence puts this failure to pro-

duce the best evidence in the category of spoliation and fabrication:

> "To smother evidence is not much better morally or legally than to fabricate it. So far as the suppression is operative, it may well tend *pro tanto*, to fabricate a misleading and false conclusion. The suppression, as has been said, may relate to (a) witnesses, or (b) documents, *i. e.*, writings."
>
> 2 Chamberlayne Evidence, Sec. 1075.

Another of the leading writers on evidence puts it as follows:

> "The nonproduction of evidence that would naturally have been produced by an honest and therefore fearless claimant permits the inference that its tenor is unfavorable to the party's cause."
>
> Wigmore on Evidence, Sec. 285.

In Missouri, where the case was tried in the District Court, the Supreme Court has said:

> "Why Mr. Ike Levy, who made the alleged contract with plaintiffs, as defendants' agent, was not used as a witness, or his evidence obtained and offered by the defendants, does not appear; and defendants' neglect to produce him as a witness, or to show any reason for their failure so to do, raises a presumption that their defense is not made in good faith."
>
> *Bryant* v. *Lazarus* (July 1, 1911), 235 Mo., 606; 139 S. W., 558 (560).

Plainly the presumption is that if in the case at bar the truth had been exhibited by the records of the commission companies the claims for reparation allowed by the Commission would have failed.

It was the duty of the Commission to demand this showing before making any order—and that regardless of any supposed failure of the carriers to make objections. Why was the plaintiff not compelled by the Com-

mission and the District Court to assume the burden of proof which the law placed upon him?

The complainant in the case at bar having failed to produce before the Commission the primary evidence which was shown to be within easy reach, having chosen against objections to "take a chance" on what the Circuit Court of Appeals called "the worst kind of hearsay," the presumption of the law—as strong as a statute—it is statutory in many states—required that the petition for reparation be denied.

The rule in the federal courts has been stated as given, *supra*, by Lord Mansfield and by Wigmore.

Robinson v. *Union Central, etc.* (April, 1906), 144 Federal, 1005 (1010).

The language of Lord Mansfield has been accepted and quoted by the Supreme Court of the United States.

Kirby v. *Tallmadge*, 160 U. S., 379.

The foregoing review of the record and the authorities shows not only that Spiller introduced "the worst kind of hearsay," but also that his conduct in refraining from presenting the primary evidence which was available required the court to presume that the evidence would be against him if produced.

IV.

OBJECTIONS OF THE CARRIERS BEFORE COMMISSION AND COURT.

Assignment of error IV is (f. 497) that the Circuit Court of Appeals erred in holding that "counsel were not required to present objections to inadmissible testimony with the same nicety as in actions in court." What the Court said precisely was this (f. 425):

"We are of the opinion, if the proceedings before

the Commission are allowed to be conducted in an informal way, so far as the Commission is concerned counsel engaged in the conduct of such proceedings are not required to preserve and protect their rights with the watchful nicety that would be required in courts of justice."

That is, as the Supreme Court said in the Louisville & Nashville case, "the more liberal the practice in admitting testimony, the more imperative the obligations to preserve the essential rules of evidence by which rights are asserted or defended." The Circuit Court of Appeals added (f. 425) that the record "shows in many places where counsel asserted that there was an entire failure of proof and demanded that the proceedings should be dismissed, so that it cannot be said counsel acquiesced in the proposition that the tabulated statement, together with the admissions of the carriers, proved a case for damages against them." Finally, the Court said (f. 426) that the question before it was, not upon "the admission or rejection of evidence," but whether there was any substantial evidence before the Commission to justify its order and that such an inquiry permitted the court "to consider the character of the evidence introduced to support the order."

In considering the objections which the carriers made to the competency and sufficiency of the evidence we shall take up first the objections which they registered during the three hearings before the Interstate Commerce Commission. After that we shall examine into the objections which the carriers raised in the trial *de novo* in the District Court (1) to the sufficiency of the record made by the Commission to support the award and (2) to the sufficiency of the record in the District Court to support a judgment.

Objections before Commission.

During the first of the three hearings on reparation an attempt was made to place upon the carriers the burden of proving a case against themselves by requiring them to check up the claims of Spiller and present in evidence statements upon which an order of reparation could be predicated. But it was made clear that the data offered by the complainant for checking by the carriers were not sufficient to enable them to trace the consignments. And it was shown by the evidence of the complainant that the shipping papers of the carriers often, if not generally, contained, not the names of the owners or consignors, but the names of caretakers. It was, therefore, impossible for the carriers to find from their records who the owners of the live stock were and consequently who were the persons who paid the freight. Thereupon the Commissioner suggested to counsel for complainant that he go out to the Chicago stockyards and ascertain what the books there might show in the way of complete records (p. 227):

> "Mr. Cowan: We would be very glad to do that if we can do it. *So far as the utility of it is concerned, however, it does not seem to me to be necessary.*
>
> Commissioner Prouty: Only in this way, Mr. Cowan, Mr. Norton says his people informed him that they cannot identify these transactions without looking through all of their waybills, and perhaps they could not do it then without the number of the car. What they want is the initials and the number of the car. If they have that in addition to your statements then they can identify the shipments.
>
> Mr. Norton: Mr. Cowan's statement shows he has over $40,000 checked up against us, our company alone, and he has not finished his statement. That is a considerable sum of money for us.

Commissioner Prouty: You mean against the Santa Fe?

Mr. Norton: Yes, and *we ought to have a pretty plain case against us and one we can check up with reasonable accuracy.* As I pointed out a while ago, they have both members and nonmembers here and WE OUGHT TO HAVE SUCH DATA PRESENTED TO US SO THAT WE CAN RAISE ALL LEGAL AND PROPER OBJECTIONS BEFORE THE COMMISSION. THE SHOWING OUGHT TO BE COMPLETE IN ALL PARTICULARS AGAINST US."

There we have on the first day of the first hearing on reparation a statement by counsel for defendants that they wanted the data of complainant assembled and presented in such a manner that, after they were all together, they could "*raise all legal and proper objections before the Commission.*" The Commissioner frequently promised that he would require the production of the books. He never required it. He never looked into the books of the commission companies himself, as he promised to do. He never delegated an examiner to ascertain the facts from those books and bring them into the trial, as he promised to do. The case drifted along and finally it was suddenly closed without proof not only, but the award was made to an assignee, who was, of course, a stranger to the shipping contracts, who was shown of record to have no personal interest in the claims at all, who does not appear to have parted with value for them, and who of course sustained no damage from the conduct of the carriers.

The foregoing statement by counsel for the defendants, on the first day of the first hearing, that the data for complainants should be presented "so that we can raise all legal and proper objections before the Commission," is a positive refutation of the contention of the District Court (f. 385)—flatly rejected by the Circuit Court of Appeals (f. 425)—that Spiller's hearsay evidence was "ac-

quiesced in by counsel at the earlier stage of the proceedings."

The Commissioner having shown a tendency to criticise the carriers for not having come in prepared to prove a case against themselves, counsel for defendants, referring to other cases in which shippers had produced their shipping papers and in a workmanlike manner made proof by primary evidence of the ownership of the consignment and the payment of the freight, said (p. 229):

> "Mr. Norton: I want to take exception to the criticism of us because in the Burnham-Hanna-Munger case and other cases that they have settled under the auspices of the Commission they [the shippers] have always had the goods and *that is what we expected they would have here, the billing.*
>
> Commissioner Prouty: You have known this reparation would be claimed and you could have very easily kept a record of these shipments and had it at hand.
>
> Mr. Norton: No, as to the shipments between August, 1906 and 1908, it had passed out of our hands before the case was decided, your Honor."

Neither could the carriers, had they tried to do so, have kept a record of the shipments as the Commissioner stated, for as has already been shown, the records of the carriers contained the names, not of owners and real shippers, but of caretakers who attended the shipments and rode on drovers' passes.

A little later the Commissioner, plainly perceiving that the matter offered by the complainant was totally lacking in evidentiary substance, said (pp. 232-3):

> "Commissioner Prouty: Gentlemen, I was about to make this suggestion: The Commission proposes to commit this case to Mr. Davis as an examiner of the Commission when we get to the point where we know exactly what is to be done for the purpose of making any examination of the books which may be necessary. Now, it occurred to me that he could do his work so far as it was necessary for him to do it,

much more intelligently and much more expeditiously in connection with the books of the companies, both the commission merchants and the railroads and with the assistance of the railroads and the commission merchants. My thought suggests that the complainant should furnish a man and the railroads should furnish a man and that these two men with Mr. Davis should go to Kansas City or St. Louis or here in Chicago and check up these different statements beginning with the books of the commission men at the stockyards and arriving at sufficient facts so that the defendants can make any further check which they desire. The first thing is to identify the shipments. Now, what do you say, Mr. Norton, to some such proposition as that?

Mr. Norton: Well, *that sounds to me like asking us to get busy and go to the trouble and expense of proving the case against us. I don't think it right that we should.*

Commissioner Prouty: *Neither do I,* but you want to know in the end whether these shipments have been made."

At the opening of the second day of the first hearing counsel for defendants, while the incompetent hearsay and tabulations of the previous day were under consideration, protested, contrary to the statement previously quoted from the trial court as to "acquiescence," that while desiring to be courteous to the Commissioner and to counsel, he insisted that it was his duty to his client to "protect it against claims which are not legally proved up and shown" (pp. 233-4):

"Mr. Norton: *I feel about it just as I did yesterday;* I want to be just as reasonable and courteous to the Commission as I can be, but *I am under pay to a railway company to protect it against claims which are not legally proved up and shown,* and I do not want as an employee of a railway company to enable somebody who has been guilty of laches for several years to prove a case against us, or confess judgment.

Before the award was made by the Commission or before this decision was made by the Commis-

sion all of these transactions have taken place on which they are seeking reparation. *They were expecting to go after reparation and had all this material in their hands with which they could make proof of their claims. They have not done it and I do not think they should ask us to do it now.*

Commissioner Prouty: I think *if we had done our duty we should have required you to keep an account of all the cattle shipments* made to these different markets at the time. I think *I shall interest myself to secure whatever legislation is necessary* if it is necessary and if not, we will do it without it, to require carriers in cases of this sort where there may be reparation, to keep an account of all shipments of that kind. There is nothing unreasonable about that.

Mr. Norton: There may not be, but I think it is unreasonable now to ask us to go into our books when they do not give a single initial or a single car number.

Commissioner Prouty: But there is no doubt some cattle were shipped from Texas.

Mr. Norton: Yes.

Commissioner Prouty: And that these rates were paid.

Mr. Norton: Yes.

Commissioner Prouty: And that the Commission has decided that a less rate should have been paid. Now, it ought to be the desire of all parties to ascertain in order to present this question fairly, what shipments were made. You certainly do not want to pay anything unless the shipment was made; and we certainly do not want to award damages unless the shipment was made, so it is in the interest of all parties to ascertain whether the shipment was made.

Now, my suggestion is that the complainants shall furnish a man to protect their interests and the carriers shall furnish a man to protect their interests, and that the Commission shall furnish an examiner to examine the books and see what the books show.

Mr. Norton: *I do not know whether it is in the interest of all parties to ascertain whether the shipments were made. It does not become of interest to us until complainant has shown he made the shipment. Then it becomes of interest to us to check it*

up. But he has not offered proof here to show that any particular shipment was made.''

There, on the second day of the first hearing, is another protest by counsel for defendants that legal proof should be offered, and the foregoing paragraph is a refutation of the statement of the District Court that the defendants had "acquiesced" in anything "at the earlier stage of the proceedings."

To the foregoing objection, and the statement that the consignors should have preserved their shipping papers, the Commissioner said (p. 235):

> "Commissioner Prouty: I do not think they are just as well able as you are. *Of course, they should have kept their expense bills; they knew this matter was coming up and there is no reason why they should not have kept their expense bills* also, and consequently I am not disposed to cast any undue burden upon you."

The Commissioner was wrong in the foregoing, as the record already reviewed shows, for one of the first things brought out by the witness for the complainant was that cattle were shipped in the names of caretakers so that they might have the drovers' passes which go to the owners who pay the freight. Therefore, the shipping records of the carriers would have disclosed nothing at all as to the ownership of any car.

Counsel for complainant felt the force of the objection of the carriers and of the Commissioner to the sufficiency of his proof (p. 236):

> "Mr. Norton: In answer to the suggestion of the Commissioner that we decline to do thus and so, I do not want the record to read that way. *The proposal is so strange to my point of view that it comes entirely new, that a complainant in an action for damages should come in and ask us to prove his case.*
>
> Mr. Cowan: We have proved that we have paid the freight.

Mr. Norton: *You have not proved that you have paid the freight.*

Mr. Cowan: I propose to do it before an examiner of the Commission."

Yet he never did.

Stating that something would be required in addition to the checking of the tabulations by the defendants, "some proof that Aaron & Hughes paid the freight, and that proof would be supplied by the books of the commission merchant," Commissioner Prouty continued (p. 255):

"Assuming that to be so, Mr. Norton, would you require in every case that the books of the commission merchant be produced? You know, of course, what the course of business is and you must feel satisfied that these consignors, when they are the owners at least, do pay this freight. Now, the question is whether you would require Mr. Cowan to produce these books and establish that fact with respect to every shipment; and I am addressing this same question to all the attorneys here, if the matter comes up in the same way.

Mr. Norton: Speaking for myself, on the impulse of the moment, I should not want to put Mr. Cowan to any unnecessary work, and it would amount to unnecessary work for us. I should imagine that those books might be examined, something as a master would examine them, and let him make a report.

Commissioner Prouty: That is, you would like to have the books brought in before the examiner, who is to take this evidence and have them examined in a general way by you, so you can see—

Mr. Norton: No, I do not think I would go that far. I presumed they might be examined out there by him.

Commissioner Prouty: That is, you would allow the examiner to go out there and examine the books?

Mr. Norton: I rather think so, answering on the spur of the moment, in company with somebody representing our company.

Commissioner Prouty: *We shall try to give you*

an examiner who will be entirely disinterested, and one competent to examine the books and ascertain what they show.

Mr. Norton: That is my immediate feeling about it. I have not conferred with any of the rest on that subject and do not know how they would feel, but I am not looking for any additional work in any direction.

Mr. Cowan: I am much obliged to you, Mr. Norton, because I am not either."

The foregoing shows what the record generally disclosed, namely, the disposition of the carriers to put nothing in the way of the introduction of competent and primary evidence. But the unqualified promise of the Commissioner, which we have printed in italics in the foregoing, never was carried out. The books containing primary evidence were not only never produced, but they were never looked into by either the Commissioner or an examiner.

At the third and last hearing the carriers still protested against the sufficiency of the proof to sustain an award of damages (p. 280):

"Commissioner Prouty: Is the Atchison Road represented?

Mr. Andrews: I represent the Santa Fe, F. E. Andrews.

Commissioner Prouty: Mr. Andrews, do you make any question as to the movement of the cars and the correctness of the statement as made by the complainant, or as verified by you with respect to those cars which you checked?

Mr. Andrews: *We do not make any admission excepting that the cars moved. That is all our checking is supposed to show; it shows on its face.*

Commissioner Prouty: Your check shows they moved from a certain point to a certain point, and that certain freight was paid?

Mr. Andrews: We did not make any endeavor excepting to see that the cars moved, is all.

Commissioner Prouty: And moved under the name which appears in the statement checked you?

Mr. Andrews: I don't understand that the consignor or consignee were checked up. They show on their face. The understanding I have about it from our auditors is that they made a complete check of the movement of the cars, and the weights, etc., but I do not think they ascertained who the shippers were.

Commissioner Prouty: I suppose they made no ascertainment beyond the billing, but they must have checked those against the billing.

Mr. Andrews: I don't know as to that.

Commissioner Prouty: Do you make any question about the right of the complainant to an order for reparation as to these cars which you admit moved?

Mr. Andrews: Why, excepting that *they have not shown that they were the shippers. That is a matter that we do not admit.* We take the position also that *they have not made any special proof of damage.*

Commissioner Prouty: I understand that, *but you admit that they paid the freight?*

Mr. Andrews: *No, we do not admit that.*

Commissioner Prouty: You admit that somebody paid the freight?

Mr. Andrews: *No, we admit that the cars moved and that so much was collected on each car.*

Commissioner Prouty: Somebody must have paid you the freight?

Mr. Andrews: *But we do not admit that the claimants paid the freight.*"

Pursuing the inquiry (p. 281), the Commissioner made the erroneous assumption that those listed whose names appeared in the exhibit "appeared on the waybills as the owners," for it had several times appeared that the waybills and shipping papers of the carriers showed the names, not of owners, but of caretakers:

"Commissioner Prouty: Just wait a minute, Mr. Cowan. Do you make any question on the part of the Santa Fe in case the Commission finds these cars were shipped by the persons who make the claim, who appeared on the waybills as the owners, and the freight was paid by that person—do you make any

objection to the issuing of an order of reparation at this time with respect to those claims?

Mr. Andrews: We do on the ground that they have not shown damage.

Commissioner Prouty: Yes, I understand that that ground is always raised. They have shown damage to this extent, that they paid a higher rate than the Commission found reasonable. It is a legal question as to whether that is damage.

Mr. Andrews: *Yes, but we do not admit that these claimants are entitled to or paid the freight.*

Commissioner Prouty: I am asking you in case the Commission finds that fact, do you make any objection to an order for reparation?

Mr. Andrews: Excepting that we do not admit that they have suffered damage.

Commissioner Prouty: To make my question more specific; here are 173 cars claimed by Mrs. Adair. You admit the movement of 135. Do you object to the issuing of an order with repsect to those 135 cars before the question as to the remaining cars is determined?

Mr. Andrews: *We object to it on the ground that the claimants have not shown that they were damaged.*

The foregoing shows that in the last hour of the third and final hearing on reparation the defendants were protesting that no one had been identified as the owner of a carload of cattle or the payer of a freight charge.

In answer to the remark of the trial court about "acquiescence" we have shown that at the first hearing exceptions were taken to the sufficiency of the evidence. Those objections were strung through the record from the beginning to the end. As the Circuit Court of Appeals found (f. 425), "the record shows in many places where counsel asserted that there was an entire failure of proof and demanded that the proceedings should be dismissed, so that it cannot be said that counsel acquiesced in the proposition that the tabulated statement, together

with the admissions of the carriers proved a case for damages against them."

The witness for the complainant himself showed near the close of the last day's hearing that there was a letter in the record from the Chicago & Alton Railroad Company carefully withholding admission of anything (p. 286):

> "Commissioner Prouty: You may proceed, Mr. Williams.
>
> Mr. Williams: The next I have is the Chicago & Alton. In returning their checking they furnished their car numbers, waybill references, initials, and so forth, the same as the Santa Fe did, but accompanying this I have a letter saying that *they do not admit anything like it has been repeated here this morning several times;* but at the same time they furnish such information as would enable almost anyone to say that those were the shipments.
>
> Commissioner Prouty: Let me see the letter. You say you have a letter from them in this connection.
>
> Mr. Williams: Yes, sir.
>
> Commissioner Prouty: Just let me see the letter."

The Illinois Central Railroad Company also had filed a motion to dismiss and at the last hearing it renewed it (p. 287):

> "Commissioner Prouty: You are of the opinion then that the checking is sufficient to identify these cars as having moved?
>
> Mr. Humburg: Our position upon that matter, if your Honor please, is that the statement we have submitted to Mr. Williams will speak for itself. Beyond that we do not know what the situation is. That is to say, we do not know of our own knowledge who finally bore the charges; and *we urge in substance the motion to dismiss filed with the Commission on the ground shown in that motion.*
>
> Commissioner Prouty: That, as I remember it, was because the claimants show no damage to them?

Mr. Humburg: Yes, and the several other grounds urged in that motion."

At the very close of the final hearing Mr. Dickinson of the Rock Island put in the record the statement that any failure of defendants to object from time to time should not be taken as admission of anything (p. 299):

"Commissioner Prouty: I don't think you need to go into that; *unless there is some objection we will find the fact of the assignment according to the language of the assignment itself in all these cases in which an assignment has been made*, and you indicate in whose favor the order should be made in all cases.

Now, is there anything more to be said about this case, gentlemen, to-day?

Mr. Dickinson: I would like to suggest that it may be true as far as my knowledge goes, that there is a universal custom of the commission houses to deduct freight charges from the invoice and remit the balance to the consignor, but *I do not feel at liberty to admit the sufficiency or the competency of the proof that has so far been offered to sustain that proposition in this case.*

Mr. Cowan: How should I be able to prove it if it is a fact? Do you want somebody from a commission house that is thoroughly familiar with it?

Mr. Dickinson: Of course, *I am not making the proof. I do not think it would be right for me to sit here silently and by my silence admit that you have proved that fact, so far as you have proceeded in this case.*"

In the foregoing the Commissioner said that unless there was some objection "we will find the fact of the assignments." No man had testified that he made an assignment. No signature of any man to an assignment was proved. On that kind of record, totally destitute of "quality," totally without facts, can the Commission make a legal finding? The Circuit Court of Appeals found (f. 427) that there was not only no proof in the record of an assignment, but also that the record showed

with the admissions of the carriers proved a case for damages against them."

The witness for the complainant himself showed near the close of the last day's hearing that there was a letter in the record from the Chicago & Alton Railroad Company carefully withholding admission of anything (p. 286):

> "Commissioner Prouty: You may proceed, Mr. Williams.
>
> Mr. Williams: The next I have is the Chicago & Alton. In returning their checking they furnished their car numbers, waybill references, initials, and so forth, the same as the Santa Fe did, but accompanying this I have a letter saying that *they do not admit anything like it has been repeated here this morning several times;* but at the same time they furnish such information as would enable almost anyone to say that those were the shipments.
>
> Commissioner Prouty: Let me see the letter. You say you have a letter from them in this connection.
>
> Mr. Williams: Yes, sir.
>
> Commissioner Prouty: Just let me see the letter."

The Illinois Central Railroad Company also had filed a motion to dismiss and at the last hearing it renewed it (p. 287):

> "Commissioner Prouty: You are of the opinion then that the checking is sufficient to identify these cars as having moved?
>
> Mr. Humburg: Our position upon that matter, if your Honor please, is that the statement we have submitted to Mr. Williams will speak for itself. Beyond that we do not know what the situation is. That is to say, we do not know of our own knowledge who finally bore the charges; and *we urge in substance the motion to dismiss filed with the Commission on the ground shown in that motion.*
>
> Commissioner Prouty: That, as I remember it, was because the claimants show no damage to them?

Mr. Humburg: Yes, and the several other grounds urged in that motion."

At the very close of the final hearing Mr. Dickinson of the Rock Island put in the record the statement that any failure of defendants to object from time to time should not be taken as admission of anything (p. 299):

"Commissioner Prouty: I don't think you need to go into that; *unless there is some objection we will find the fact of the assignment according to the language of the assignment itself in all these cases in which an assignment has been made,* and you indicate in whose favor the order should be made in all cases.

Now, is there anything more to be said about this case, gentlemen, to-day?

Mr. Dickinson: I would like to suggest that it may be true as far as my knowledge goes, that there is a universal custom of the commission houses to deduct freight charges from the invoice and remit the balance to the consignor, but *I do not feel at liberty to admit the sufficiency or the competency of the proof that has so far been offered to sustain that proposition in this case.*

Mr. Cowan: How should I be able to prove it if it is a fact? Do you want somebody from a commission house that is thoroughly familiar with it?

Mr. Dickinson: Of course, *I am not making the proof. I do not think it would be right for me to sit here silently and by my silence admit that you have proved that fact, so far as you have proceeded in this case.*"

In the foregoing the Commissioner said that unless there was some objection "we will find the fact of the assignments." No man had testified that he made an assignment. No signature of any man to an assignment was proved. On that kind of record, totally destitute of "quality," totally without facts, can the Commission make a legal finding? The Circuit Court of Appeals found (f. 427) that there was not only no proof in the record of an assignment, but also that the record showed

that "the purpose of the assignment was not such as to vest the legal title of the claimants in Spiller so as to authorize the Commission to make the award of damages to him." The only signed assignment exhibited was that of Mrs. Adair (p. 297), and it appeared that that was signed by her bookkeeper, with no proof that he had been empowered to do it. The assignment shown in the record (p. 297) is a blank—never executed by anybody. No other assignments were offered in evidence.

Let us suppose, for the sake of argument, that the so-called assignment of Mrs. Adair, the only one exhibited at the hearing, was not objected to by the carriers and that the Commissioner had legal power to say that unless there was some objection "we will find the fact of the assignments." What do we have in the record? An assignment in the name of a woman who did not sign it, with no proof that the man who signed her name had any authority from her to do so. Now, that is the best that can be assumed of the remaining assignments, *which never were put in evidence,* and which the Commissioner said he would "find" on that record to have been made. It cannot, of course, be taken that any other assignment was better than that of Mrs. Adair. Suppose that no carrier had been present to object. Could the Commission have made an award of $147,851 on assignments never executed by the owners of the cattle? Could the Commission have made an award on assignments which were not even offered in evidence? Where the assignments were not offered in evidence of course there was no opportunity for the defendants to object and certainly nothing in which they could "acquiesce." Was it not the duty of the Commission to protect these carriers against a bad record—against an award of money not clearly owing? Even if the carriers had made no objection at all (but of course they had), we should thus have

a record showing assignments not executed by the alleged assignors and not shown to have been executed by persons duly authorized.

> "Where the assignment is executed by an agent, his authority must be shown."
>
> 5 Corpus Juris, 1020.

The answer of defendants in the District Court (f. 44) denied specifically that "claims and rights of owners and shippers were duly or legally assigned to the said Spiller" and it was averred that "no assignment for the owner or shipper to Spiller was made." That placed the burden upon the plaintiff in the District Court to make proof in his trial *de novo* of the allegations of his petition which had thus been categorically denied. Where the issue is thus raised "evidence of the assignment should be of a direct and positive character."

5 Corpus Juris, 1019.

The proof which an assignee must make to entitle him to judgment must be so explicit as to bar the assignor from later obtaining a judgment against the defendants. What was in this record to prevent Mrs. Adair from prosecuting a claim against these carriers? If she came forward and denied that she had made an assignment, would the assumption by the Commissioner that she had made an assignment be a protection to the carriers? Certainly not. Much less could the defendants plead in bar a judgment in favor of an assignee where he had failed to introduce in evidence his assignment.

On this condition of the record the Circuit Court of Appeals, after referring to a statement of Spiller's counsel, that while perhaps the order of the Commission ought to be made in the name of the owner of the claim, he thought the agency was sufficiently proven to entitle them to collect the claim, said (f. 427):

"After the statement of counsel the Commissioner said: 'there is no proof here that these assignments have been executed by the persons who purport to execute them, but I take it, gentlemen of the defense, it would not be your desire to put Mr. Cowan to the necessity of making proof in each individual case. There is no doubt about it, I suppose, and we will find, unless there is some objection, that this assignment was regularly made by the person purporting to execute it.' The remarks of the Commissioner related only to the assignment of the claim of Mrs. Adair."

No other assignment was put in evidence.

And the assumption of counsel for complainant that anything in the way of proof had been admitted by the carriers was disposed of at the last moment of the last hearing as follows (p. 300):

"Commissioner Prouty: I understand the *Commission must find that the owner of the cattle himself paid the freight either himself or through some agent;* and *Mr. Dickinson objects that there is not sufficient proof as to that.*

Mr. Cowan: I do not understand Mr. Dickinson that way. I understand Mr. Dickinson to mean that there is no sufficient evidence to prove that the commission man is the agent to collect and pay back overcharges.

Mr. Dickinson: No, *the Commissioner has my view.*"

Yet in the face of that the brief in this court for Spiller is considerably given up to the claim that the carriers made "admissions" sufficient to support the order of reparation!

Taking up at the second hearing one of the tabulations of the sort which had been offered at the first hearing, Commissioner Prouty inquired regarding admissions and it was stated by counsel for the defendants very explicity that nothing was admitted except that *cars moved* and that *freight was collected.* After that it re-

mained to be shown who owned the property, who paid the freight, and who, if anybody, was damaged. That proof never was made (p. 251):

"Commissioner Prouty: Let us see just what the railroads do admit. Take this first item. This involves a shipment in the case of which Aaron & Hughes were the consignors. Somebody who may be termed 'E' was the consignee. It originated upon the Ft. Worth & Denver City Railway at Giles, Texas, and was shipped to destination No. 1, Kansas City, delivered on March 5, 1907. The shipment consisted of two cars. The rate paid was 34½ cents. The rate ordered by the Commission was 31½ cents. The amount of the overcharge is $13.20. Now, the admission of the carriers would apparently show that somebody made a shipment, Aaron & Hughes *perhaps* made a shipment on that date and paid that rate, and are entitled to the $13.20. *Do you concede, Mr. Norton, that Aaron & Hughes paid the* $13.20?

Mr. Norton: *No, all that we show by that is that this car did move as stated, and that we collected there the amount specified* in Mr. Cowan's sheet, or else some additional amount.

Commissioner Prouty: Apparently you concede there that you collected the amount specified by Mr. Cowan?

Mr. Norton: Yes.

Commissioner Prouty: Now, *it is necessary in addition to that, for the Commission to find before it makes an order that some individual paid that freight.* Mr. Cowan, do you claim that the admission of the railroad company shows that Aaron & Hughes paid that freight?

Mr. Cowan: Well, I do not know that I claim that the admission of the railroad is to that effect, but it would seem necessarily so, because *we are prepared to prove that in all cases, without exception,* there is charged up in the account sales by the commission company the amount of the freight, and that is taken out and deducted from the receipts for the cattle when sold."

Following that specific reservation by the carriers that their checking of the second-hand (or third-hand) tables put in by Mr. Williams admitted only that cars moved and freight was collected, they further specified that they admitted nothing as to market transactions. The Commissioner referred to the tabulations which the carriers had checked (p. 257):

> "Commissioner Prouty: You have all those now.
> Mr. Cowan: Yes, Mr. Norton has furnished his and I suppose the other railroads will do the same thing. Then the controversy ought to rest only with respect to shipments as to which we cannot agree. *Now, I ask the attorneys of the railroads,* as they probably now know, whether it is the fact that in all cases the freight was paid by the commission company and deducted out of the account sales of the cattle, as I have stated. I presume all you gentlemen know that to be the case. Is that right, Mr. Wood?
> Mr. Wood: *I do not know anything about it except what you say about it, judge.*"

Notwithstanding that, a good part of the brief in this court for Spiller has to do with "admissions" by the carriers sufficient to support the award.

The Circuit Court of Appeals points out (f. 424) the following concession made in the brief filed for Spiller in that court, that it was not claimed that the carriers admitted more than "the movement of the cars as claimed, and that the excess freight was paid":

> "By whom paid was not admitted and that the shippers were damaged was not admitted."

Therefore, the burden was upon the complainant before the Commission, and upon the plaintiff in the trial court, to show by competent evidence that some particular person paid freight on a particular carload and that he was damaged by the payment. On that state of facts the Circuit Court of Appeals said (f. 424):

"There is no warrant for claiming that the admission that certain freight moved and that freight thereon was collected made a case upon which the Commission could award damages against the carriers, and these admissions are all the legitimate proof upon which the order of the Commission must stand or fall."

Yet, in the face of the foregoing, it is assigned as error here (f. 497) that the Circuit Court of Appeals held that the defendants were not required to present objections to the inadmissibility of testimony with the same nicety as they would be in actions at law in court, and that inadmissible or objectionable testimony, although offered without objection, should not be considered by the court in support of the Commission's order.

The court did not put it just that way (f. 425):

"We are of the opinion if the proceedings before the Commission are allowed to be conducted in an informal way, so far as the Commission is concerned counsel engaged in the conduct of such proceedings are not required to preserve and protect their rights with the watchful nicety that would be required in courts of justice."

Then the court added that "it cannot be said that counsel acquiesced in the proposition that the tabulated statement, together with the admissions of the carriers, proved a case for damages against them."

And the notion of the trial court and of counsel for plaintiff in error, as shown in specification of errors IV, that the defendants "acquiesced" in anything or admitted anything essential to the establishment of a legal claim for damages was properly declared to be groundless, near the close of the final hearing, by the Commissioner himself (p. 290):

"Mr. Cowan: I want to take an order for the claims that have been admitted. *I want to take a chance.*

> Commissioner Prouty: *You understand there has not been anything admitted;* that is to say, *these railroads have not admitted you are entitled to any money.* They have admitted the movement of certain cars, and they earnestly insist you are not entitled to recover; but I think the Commission would find on the facts admitted that you have paid the freight and are entitled to reparation. We hold that the payment of an unreasonable charge imports damage, that of itself shows damage. Now, the railroads claim to the contrary, and are going to try that question."

The foregoing extracts from the record before the Commission show that counsel for the carriers were more alert with objections than is usual before committees of inquiry or commissions.

The foregoing shows plainly that the defendants made proper and definite objection to testimony produced and that they acquiesced in nothing. It also plainly shows that the carriers admitted nothing except the mere physical movement of certain cars. That this was the situation of record plainly appears from the language of Commissioner Prouty at the close of the hearing, as follows (p. 290):

> "Commissioner Prouty: You understand that there has not been anything admitted. That is to say, these railroads have not admitted that you are entitled to any money. *They have admitted the movement of certain cars,* and they earnestly insist that you are not entitled to recover; so I think the Commission should find on the facts admitted that you have paid the freight and are entitled to reparation."

That counsel for Spiller understood the purport of the Commissioner's ruling appears from the following statement of his brief, which was quoted by the Circuit Court of Appeals and which appears at folio 424 of this record:

> "It [the record] shows conclusively that all claims shown in Appendix 'A' were checked by the rail-

roads and they admitted the movement of the cars as claimed, and that the excess freight was paid. By whom paid was not admitted and that the shippers were damaged was not admitted."

After having examined the record and listened to the contention and argument of counsel for Spiller, the Circuit Court of Appeals dealt with the matter as follows (f. 425):

"There was no proof that the consignors mentioned in the tabulated statement, now called Appendix 'A,' were the owners of the cattle, and it appeared beyond dispute by the testimony of the only witness sworn, that the cattle were not in all cases shipped in the name of the owner, but in the name of the caretaker. The extent to which the admissions of the carriers carried the case is not disputed."

Objections Before Trial Court.

When the action to recover on the award of the Commission which Spiller brought in the United States District Court at Kansas City came on for trial the carriers introduced (f. 214), in support of their answer "that the Commission was without evidence before it," a transcript of the evidence on reparation with a certificate of the Secretary of the Interstate Commerce Commission (p. 302) that it contained a true copy of the transcript of the stenographer's notes of the three hearings.

It was objected by the carriers (f. 327) that the evidence was not competent or relevant. It was again stated (f. 343) that further exceptions "to the competency and materiality of that evidence and the sufficiency of it" would be filed, and the court gave time to prepare exceptions:

"The Court: Of course you shall have it if necessary. My question of you was this; you introduced

this in evidence, the object being to show that there was substantially no evidence before the Commission which would justify the finding.

Mr. Norton: And that evidence before it was incompetent."

Later, counsel for defendants said to the court (f. 357):

"Mr. Norton: Now it was my intention to draw off from the record of the testimony before the Commission a number of things which we desired more particularly than other things to raise an objection as to the competency and materiality, and as to its being hearsay and as to its being immaterial, that should be excluded from the consideration of this court, in weighing the evidence in this case, which is a trial *de novo*. In these cases you are aware the defendant has a right to go back and inquire into the reasonableness of the rate that was ordered out by the Interstate Commerce Commission, and the rate that was ordered in, but we have not attempted to do that. It would be laborious as to time and labor, but in these other respects this is a trial *de novo*, and the Act of Congress makes the order and report of the Commission *prima facie* evidence only—it makes that a kind of witness. Now we put in this witness as contra-proof and we want this court to pass upon a number of objections that we take to that evidence, as to the competency of it before the Commission and the competency of it in this court, the consideration of which would amount to the taking of our property without due process of law."

In the foregoing particular attention was called to "the competency of it in this court." It was also objected to as *hearsay*. That made it the duty of the court on the trial *de novo* to consider the matter as new evidence objected to when offered, and it was therefore bound to exclude from the court record all the hearsay and other incompetent matter received by the Commission.

On the effect of the provision of Section 16 of the Act to Regulate Commerce, that "the findings and order of the Commission shall be *prima facie* evidence of the facts therein stated," this court has said:

> "This provision only establishes a rebuttable presumption. It cuts off no defense, interposes no obstacle to a full contestation of all the issues, and takes no question of fact from either court or jury."
>
> *Meeker* v. *Lehigh Valley, etc.*, 236 U. S., 412 (430).

That is, when Spiller introduced in the District Court the finding and order of the Commission he merely opened up a case which it was his burden to maintain after his *prima facie* proof had been countervailed; and when the carriers introduced the record before the Commission under the averment in their answer that it did not support the finding and award and that it contained incompetent matter, it became the duty of the District Court to deal with it just as he would in any jury trial and to strike out from consideration hearsay and other incompetent matter. Then it devolved upon plaintiff to produce primary evidence, which he failed to do.

When, after a hearing under Section 13 of the Act, the Commission determines that a party is entitled to an award of damages, and makes an order to that effect, such order has not the effect of a judgment of a court of record, but at best it is merely advisory. In order to enforce such order the complainant must file a petition in the District Court of the United States "setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises." When the complainant has done this the law provides (Section 16) that:

> "Such suit in the Circuit (District) Court of the United States shall proceed in all respects like other

> civil suits for damages, except that on the trial of such suit the findings and order of the Commission shall be *prima facie* evidence of the facts therein stated * * *"

As in such suit it is required that the complainant shall, in addition to the order of the Commission, set forth "the causes for which he claims damages," it is plain that Congress intended that the District Court should hear and determine all matters in controversy, and that the existence of an order of the Commission was simply a circumstance or element to be considered in the lawsuit. Of course, the order of the Commission would be subject to all the rules of evidence, and the rules of evidence would be subject to all the ordinary tests employed in a court of record. This must be so, because it is directed that "such suit in the Circuit Court of the United States shall proceed in all respects like other civil suits for damages * * *" The order of the Commission is only "*prima facie* evidence of the facts therein stated." It is only a rebuttable presumption and it can be tested by examining the evidence before the Commission to see if it supports the findings of the Commission. If it develops that the evidence before the Commission consisted of hearsay, the objection made in the District Court is proper and timely. If this is not true, then it would result that the District Court would be compelled to receive and found a judgment upon hearsay evidence, which hearsay evidence it would be the duty of the court to exclude in any other lawsuit. But Congress did not intend that absurdity because it provided that "such suit * * * shall proceed in all respects like other civil suits for damages."

It is not necessary, and it never has been the practice in hearings before the Commission, to observe the rules of evidence prevalent in courts. Interruption of

the proceedings by objections and exceptions are few and are not encouraged. As the Commission is not a court and as it has no rule requiring the making of a bill of exceptions to preserve the record, of course, there is no reason for asserting that a litigant must make objection or exception. The case might proceed in the absence of counsel for the defendant and the Commission might make an order, but, as before stated, that order is simply advisory and subject to analysis for the purpose of finding whether or not it is based upon sufficient evidence.

Of course all must agree that if the suit is to proceed like other civil suits for damages, then the court must have the power to govern the admission of evidence. If this is not true, then the court in this proceeding is required to admit hearsay evidence and adjudge a case upon hearsay, the exclusion of which has been mandatory from an early day in England and from the beginning of federal jurisdiction in the United States. Thus in the case of *Queen* v. *Hepburn*, 7 Cranch, 290, where a slave sought her freedom but had only hearsay evidence to support her claim, the Supreme Court of the United States held that such evidence was inadmissible. This is the leading case upon the point in the United States, and the decision is by Chief Justice Marshall. On page 295 he said:

> "These several opinions of the court depend on one general principle, the decision of which determines them all. It is this: That hearsay evidence is incompetent to establish any specific fact, which fact is in its nature susceptible of being proved by witnesses who speak from their own knowledge.
>
> However the feelings of the individual may be interested on the part of a person claiming freedom, the court cannot perceive any legal distinction between the assertion of this and of any other right, which will justify the application of a rule of evi-

dence to cases of this description which would be inapplicable to general cases in which a right to property may be asserted. The rule, then, which the court shall establish in this cause will not, in its application, be confined to cases of this particular description, but will be extended to others where rights may depend on facts which happened many years past.

It was very justly observed by a great judge, that 'all questions upon the rules of evidence are of vast importance to all orders and degrees of men; our lives, our liberty, and our property, are all concerned in the support of these rules, which have been matured by the wisdom of ages, and are now revered from their antiquity and the good sense in which they are founded.'

One of these rules is that 'hearsay' evidence is in its own nature inadmissible. That this species of testimony supposes some better testimony which might be adduced in the particular case, is not the sole ground of its exclusion. Its intrinsic weakness, its incompetency to satisfy the mind of the existence of the fact, and the frauds which might be practiced under its cover, combine to support the rule that hearsay evidence is totally inadmissible."

And on page 296 he said:

"If the circumstance that the eyewitnesses of any fact be dead should justify the introduction of testimony to establish that fact, from hearsay, no man could feel safe in any property, a claim to which might be supported by proof so easily obtained."

The objection was timely enough in the District Court. It would have been timely enough on demurrer or by way of an instruction to the jury. Thus in the case of *Pittman* v. *Gaty*, 5 Gilman (Ill.), 186, the trial court refused an instruction to the effect that hearsay evidence is not competent evidence upon which to found a verdict, and that if the jury believed any portion of the deposition of Johnson was mere hearsay they must disregard such

portion. On page 189 the court (by Chief Justice Treat) said (italics ours):

"The deposition referred to in the instruction is not incorporated into the bill of exceptions, but enough of the case is reported to show clearly that no question arose on the trial, which would have justified the introduction of mere hearsay evidence. As a general rule, such evidence is wholly inadmissible. The exceptions to the rule are few and confined chiefly to questions of pedigree. When evidence which is irrelevant, or incompetent in any event to establish a fact, gets into a case in the shape of depositions or otherwise, it is the duty of the court when required, *at any stage of the trial, to exclude it*, or direct the jury to disregard it. There is a clear distinction between this sort of proof and secondary evidence. *The former is never admissible;* the latter always is, when the primary proof cannot be produced, and if admitted without objection, it becomes a part of the case, and cannot afterwards be excluded because, though not the best evidence, it is still relevant, and tends to elucidate the question in issue. The party, by permitting it to be introduced, dispenses with the production of the superior evidence."

On page 190 the court said:

"It is further insisted, that the question whether the deposition contained improper evidence should have been referred directly to the court for its decision. It is true, that might have been done; but we can see no objection to a direction to the jury to disregard the statements of the witness, if they found that he had testified from information derived from third persons, and not of facts within his own knowledge. In many cases, there is a manifest propriety in this practice. Whether the evidence is lawful or not, may often depend on the proper conclusion to be drawn from a complicated state of facts, which the jury are, at least, as competent to arrive at as the court. In this case, the evidence in connection with the deposition may have left it doubtful whether the witness spoke of matters on his own

knowledge, or on information received from others; and that question should have been referred to the jury, to be determined as every other question of fact, under the instructions of the court."

The Circuit Court of Appeals for the Second Circuit held on January 15, 1919, as we contend. The plaintiff introduced the findings and order of the Commission and rested. The defendants offered the record before the Commission. The District Court held as a conclusion of law that no legal competent evidence had been adduced "upon the trial of this action to rebut the *prima facie* evidence furnished by the report and order of the Interstate Commerce Commission," and it gave judgment for the amount named in the reparation order. Reversing the District Court, the Circuit Court of Appeals said:

> "The case for Elliott in final analysis is based on the proposition that the findings and order of the Interstate Commission, though shown to rest on nothing that the law calls evidence, must nevertheless be themselves received as satisfactory evidence of whatever facts, or assertions of fact, are therein contained, unless rebutted by new and more persuasive testimony. Such is not the law. It was the duty of the trial court to inquire whether there was any substantial evidence before the Commission to justify its order. The matter has been so recently and exhaustively considered in *Atchison, etc. Co.* v. *Spiller*, 246 Fed. 1, 158 C. C. A. 227; 249 Fed. 677, 161 C. C. A. 587, that no further citation is necessary."
>
> *Michigan Central R. Co. et al.* v. *Elliott*, 256 Fed., 18.

The sufficiency of the record before the Commission and in the trial court was raised in writing by declarations of law requested of the District Court (f. 58), which were overruled, with exceptions preserved (f.

388). The trial court was asked to hold as a matter of law that neither Spiller nor his predecessor Crowley were authorized under the Act to Regulate Commerce to file claims for reparation with the Interstate Commerce Commission and that therefore filings by them were void and of no effect. This was in conformity with conference ruling No. 362 of the Interstate Commerce Commission, "that the Commission will not recognize an assignment to a stranger to the transportation record," which has been in effect without intermission since June 4, 1912. And ruling No. 246 had previously to that time declared that "while it would be the policy of the Commission to entertain complaints instituted on behalf of shippers by traffic bureaus or credit bureaus, in all such cases reparation would be awarded only either to the consignor or the consignee as their interests may appear."

Conference Ruling No. 362 was amended April 14, 1919, so as to admit an undisclosed principal to make proof that he bore the freight charge and secure reparation. That is, in the present case, it would permit the real owner to recover reparation as against a claimant caretaker.

Those conference rulings have been uniformly followed in every litigated case in which the question has ever arisen—*save only in the Spiller case.*

To illustrate, in a case in which the Commission found "that both consignees have assigned their interest in the claims to complainant," it said:

> "Conference Rule No. 362 provides as follows:
>
> 'In awarding reparation the Commission will recognize an assignment by a consignor to a consignee or by a consignee to a consignor, but will not recognize an assignment to a stranger to the transportation records.'
>
> 'So far as appears, complainant was a stranger to

> defendants' transportation records relative to the shipments and therefore is not entitled to any reparation that may be due."
>
> *Robinson Co.* v. *American Express Co. et al.*, 38 I. C. C., 733 (735).

The trial court was asked to declare the law to be that in the circumstances stated the Interstate Commerce Commission was without jurisdiction to try the case of Spiller.

The court was asked to declare the law to be (f. 58) that Spiller was not authorized by the Act to Regulate Commerce to file claims for reparation; that the Commission "was without jurisdiction to entertain the claims filed by the plaintiff Spiller"; that the Commission "did not have before it any legal or competent evidence of an assignment by any shipper to the plaintiff Spiller, or to said Crowley"; and that its finding of an assignment was, therefore, unsupported by competent evidence.

Yet the brief in this court for Spiller says (p. 94) that the carriers waited until reaching an appellate court "to make an objection that the assignments were not proven."

The trial court was asked to declare the law to be that the Commission had no evidence before it of injury done to Spiller or his assignors, or of pecuniary or other damage sustained by Spiller or his assignors by any act of the carriers in contravention of the law.

The court was asked to declare as a matter of law that there was no evidence before the Commission of the payment of freight by any individual, and that therefore the award of damages was unsupported by evidence and void.

The trial court was asked to declare the law to be that

the Commission erred in not granting the motion of defendants to dismiss Spiller's award of reparation for failure of proof of damage done to him.

The court was asked to declare that upon the entire record and the evidence judgment should be entered for the carriers.

Upon the raising of those questions at the trial *de novo* it was within the power of plaintiff in error to bring the books of the commission companies at Kansas City, which he had refused to produce for the Commission, after many promises to produce them. Thus we have plaintiff in error rejecting two opportunities to make proof by competent evidence—first before the Commission and, second, in the trial *de novo* in the United States District Court.

In the light of the foregoing we claim that the contention is preposterous that the carriers waived anything whatsoever in either the trial before the Commission or the trial before the District Court.

The District Court disregarded the settled practice of the state in which the trial was held, under which practice, on the objections raised by the carriers to the testimony received by the Commission, it should have excluded everything put in by the witness Williams, whose matter was fitly characterized by the Circuit Court of Appeals as "the worst kind of hearsay." Where it was contended in an action for a personal injury that objection had not been taken to hearsay, the Supreme Court of Missouri said:

> "We disregard the opinions attributed by witness Hunter to engineer Green and fireman Wilcox as to the cause of the wreck. They were incompetent. True, they were not objected to on this ground, and their admission for that reason would not be reversible error; but we are not prepared to hold that a

75

verdict can be sustained on incompetent hearsay opinions, even if not objected to."

Kane v. *Missouri Pacific, etc.* (May 10, 1913), 251 Mo., 13; 157 S. W., 644 (653).

That is in keeping with the decision of the Supreme Court of California, *supra*, that the rule against hearsay is not "technical"—it is absolute. The Circuit Court of Appeals pointed out (f. 426) that the question here is, however, not now one of the admission or rejection of evidence. It said (f. 426):

"The question before us is whether there was any substantial evidence before the Commission to justify its order. Such an inquiry permits us to consider the character of the evidence introduced to support the order."

V.

COMMISSIONER DOUBTED VALUE OF SPILLER'S EVIDENCE.

Having shown that the best evidence was available to complainant, that it not only did not take the trouble to produce it but also declined to do so, and that what it did present was "the worst kind of hearsay," we now show that Commissioner Prouty himself had no confidence in the record and that he made the order, as requested, at complainant's risk.

On the first day of the first hearing Commissioner Prouty directly raised the question of the probative value of the "stuff" which Mr. Williams had gathered up and cast in tabular form without having any direct knowledge on the subject (p. 224):

"Commissioner Prouty: I so understand. Now, Mr. Cowan, just what do you claim for these papers you have introduced? Just what probative force do you claim? Do you claim that the introduction of

those papers along with the testimony of Mr. Williams makes out for you a *prima facie* case?

Mr. Cowan: I claim that it would make out a *prima facie* case *if I would also bring before the Commission or an examiner of the Commission the evidence of the bookkeepers or persons in charge of the books of these commission companies* to show that they compiled these claims correctly from their books, that they are books of original entry in the regular course of business.

Commissioner Prouty: Now, do you claim that without the production of the books themselves?

Mr. Cowan: I can be compelled probably to produce the books themselves before an examiner, were there any use of it, or the examiner of course could be present to hear the testimony of the bookkeepers. I do not see why the books themselves should be produced but we have no objection to going to that trouble if it is necessary.

Commissioner Prouty: Now, Mr. Norton, what do you say and what do the other defendants say as to the effect of the filing of these statements and as to the production of the books? *Are you satisfied to accept the statements in lieu of the bookkeepers, and are you satisfied to accept the bookkeepers in lieu of the books?*

Mr. Norton: Speaking only for my own company, *I think the evidence offered amounts to a failure of proof and I should make a motion that the case be dismissed on that account.* Mr. Cowan has had since 1906 to get this matter ready. I showed you this morning what slips were in possession of the stockyards people that were intelligible, and if they have been lost in the meantime he has been guilty of laches. There is an enormous amount of money involved here and it seems to me *the proof put up to us ought to be of such a nature that we can tell whether Mr. Jones did ship a carload of freight and whether he did pay for it. That is to say, whether he sustained damages by reason of this rate.* Now, nothing of that sort has been given to us.

The matter Mr. Cowan has filed from time to time I submitted to our auditor's office and they said they could not check it at all. This matter which this witness puts in this morning is almost exactly the

same sort of matter. *Therefore, the question is put up to us of going to great expense and labor in order to prove a case against ourselves. That is what it amounts to.*"

There, it may be remarked parenthetically, is a clear statement of the kind of evidence which the carriers believed it essential for the complainant to produce.

Could an objection to hearsay evidence be more specifically made? It was clearly objected that the matter put in was no proof at all and that primary evidence was available.

Near the end of the second day's hearing (p. 237) the Commissioner stated that he purposed to have the checking of the sheets done expeditiously—"to have the whole thing check up in one proceeding so we know where we are at the end of that proceeding"; and stated also that "whenever Mr. Cowan has completed his statement we will designate an examiner to look at these books." Thereupon one of counsel for the carriers brought out from both counsel for Spiller and the Commissioner that the exhibits submitted by Spiller and checked by the carriers did not prove a case (p. 238):

"Mr. Burg: As I understand Mr. Cowan, he seems to think the testimony he has put in so far proves his case.

Mr. Cowan: I never said anything of the sort.

Commissioner Prouty: No, he has made no statement of that sort, or one susceptible of such construction."

Yet nothing else than the tabulations there under discussion and later checked by the carriers as to (a) movement and (b) freight collected was ever put in the record, and it is on this record that the brief for Spiller in this court insists that by "acquiescence," or nonobjection, or something else a record sufficient to support a judgment was made.

In that state of things the Commissioner, before entering the order on that kind of record, said (p. 243):

> "Commissioner Prouty: Well, I suppose it would be your business to do that, Mr. Cowan. *It is for you to determine whether or not you are satisfied to rest on that proof.* It is for me to determine, and that is why I want to see the books myself, whether the Commission will be satisfied to enter up an order on that proof. *But you must assume the responsibility of defending that order if the Commission sees fit to enter it.*
>
> Now it seems to me you ought to look at the books and make up your mind whether upon that measure of proof you can defend an order if you get one.
>
> Mr. Cowan: I have no doubt about it at all. Of course we have to make the proof and the only way to make the proof is to have the bookkeepers of these commission companies testify that these books are correctly kept and that they disclose such and such transactions."

Again the Commissioner returned to the proposition that a shipper must be found who paid a rate, and he clearly pointed out that the proof so far was lacking in what the trial court subsequently termed "quality." Commissioner Prouty called it fact. However informal the proceeding, quality or fact cannot be dispensed with (p. 244):

> "Commissioner Prouty: Well, I do not think it would be well, Mr. Cowan, to commit this case to an examiner and spend the necessary time to inspect all these books, until the Commission first is satisfied that it can upon the strength of that testimony, make the order you want. *Now, you must show the facts, I think, stated in your statement.* You must show that a shipment was made from a certain point to a certain point; that the shipper paid a certain rate; that that rate was unreasonable. When you show those facts I think you are entitled to an order.
>
> Mr. Cowan: That is correct."

There the Commissioner declared that the "facts"

which the statements filed purported to establish had not been proved.

Regardless of whether the defendant ever raised any objection at all, the Commission should not have made an order for the payment of money without having before it the incontrovertible facts of ownership and consignment, payment of freight, and damage (pp. 252-3):

> "Commissioner Prouty: It seems there are some five thousand carloads involved in this exhibit against the Atchison, Topeka & Santa Fe, and that they locate something over 4,000 carloads, leaving approximately a thousand carloads not accounted for, so that there are one thousand carloads in that case with respect to which you will have to submit further proof in respect to the facts of the shipment. Then it occurs to me that *you must in some way submit proof to us that the consignor in fact paid this freight.* In how many do you ask to have an order made in each one of these cases?
>
> Mr. Cowan: I think the simple way to do that, and I have thought about that some, is to have it made in the name of the Cattle Raisers Association of Texas, account of and for the shipper, the association being the representative of the shipper. We file our claims in each case—
>
> Commissioner Prouty: Have you an idea that you could bring suit in court in the name of the Cattle Raisers Association?
>
> Mr. Cowan: Well, that difficulty also was very thoroughly considered, and for that reason, when these claims were filed we aimed to put in the names of the shippers, thinking if we had to bring the suit in court—
>
> Commissioner Prouty: Would not the simple way be to enter up in all cases an order in the name of the shipper?
>
> Mr. Cowan: I think so, but I think the Cattle Raisers Association, so far as the order of the Commission is concerned, could be considered the agent, because it has been the agent and representative, and I am disposed to think under the present Act to Regulate Commerce, that the Cattle Raisers Asso-

ciation could maintain a suit, and we have the right to consolidate against all railroads and all shippers."

At first an order of reparation was requested for each shipper, Spiller being, it was said, only a nominal assignee and without interest. In the foregoing the order was asked for the Cattle Raisers Association. Finally the order was made to Spiller as the owner of the alleged right, the order being in this respect at absolute variance with the record.

At the second hearing the Commissioner, failing to draw from counsel for the defendants any admission beyond the movement of the cars, intimated that the record would be complete only after additional proof from the books of the commission houses that a certain person paid the freight (p. 255):

"Commissioner Prouty: Well, Mr. Cowan, unless something is suggested to the Commission beyond what has already been suggested, I am inclined to think that upon that measure of proof we would find the fact in your favor and enter up an order of reparation. I used this case as typical, so we may know what basis we are going to work upon. *But we would require, in addition to the admission of the defendants, some proof that Aaron & Hughes paid the freight, and that proof would be supplied by the books of the commission merchant.*"

At the last hearing the Commissioner, referring to the claim made by Mr. Cowan at the beginning of the trial, that an order should be made in favor of the individual shippers, started this colloquy (p. 297):

"Commissioner Prouty: Take the claim of Mrs. Adair, was that claim assigned?

Mr. Williams: Yes, sir.

Commissioner Prouty: Have you the assignment there (document handed to the Commissioner)?

What do you say, Mr. Cowan, as to the right of

the owner to ask for an order, after having made this assignment?

Mr. Cowan: I do not think the owner has the right, after having made the assignment, to ask for an order. After having made the assignment, I think the assignee has the right."

In farewell to the subject Commissioner Prouty left it this way (p. 298)

"Commissioner Prouty: You let us know right away, Mr. Cowan, whether you want the order made, if one is made, in favor of the original owner, or in favor of the assignee.

Mr. Cowan: I want it in favor of the assignee, in all cases where we have an assignment. We have considered the matter quite thoroughly and we think and I will brief that point and submit it to the Commission—that we are entitled to the order on behalf of the manager.

Commissioner Prouty: I do not care to have you brief it, you will have to assume the responsibility in making it. *You have the thing all mixed up here so I would not have any idea what ought to be done, so you make up your mind what form you think the order ought to take, and we will put the order in that form.*

Mr. Cowan: If your Honor was going to stay on the Commission I might not remark that I do not think you ought to say we have the thing all mixed up; I think it is rather pertinent.

Commissioner Prouty: I hope it is as plain to my successor as it is to you."

Thus as the hearings on reparation closed both counsel for the complainant and the Commissioner were in doubt as to whether on the record the consignor (an unknown person) or the assignee (never proved to be such and having no interest anyway) should have the enormous award which was finally made.

Was record ever more barren of legal proof?

VI.

SHOULD THE AWARD HAVE BEEN MADE TO THE SHIPPER OR TO THE ASSIGNEE?

Assignment of errors XI is (f. 498) that the Circuit Court of Appeals was wrong in holding that the purpose of assignments to Spiller was not such as to vest a legal title in him so as to authorize the Commission to make the award of damages to him. The proof on which the Circuit Court of Appeals reached that conclusion was made by counsel for the complainant under interrogations by Commissioner Prouty.

The case started on the theory that the award of reparation should be made to the man who owned the live stock and paid the freight. Later on award was asked for the Cattle Raisers Association. The case wound up with an award in favor of a stranger to the shipping contracts, an alleged assignee of shippers, and an assignee of an assignee, who did not testify, who paid nothing for the assignments so far as the record discloses, and who was not shown to have been damaged. In this respect the case was more astounding than it was in its total insufficiency of primary evidence of the facts necessary as a basis for an award to a shipper.

At the beginning of the second day of the first hearing, after the tabulations which we have examined had been exhibited, this took place (p. 231):

> "Commissioner Prouty: In whose favor, Mr. Cowan, do you ask an order in this case?
>
> Mr. Cowan: Well, we ask it really in favor of the shippers themselves. We have filed all the names.

Commissioner Prouty: So that the name of the shipper himself appears in every instance?
Mr. Cowan: In every case, yes, sir."

A little later, after a statement by Commissioner Prouty that the books of the commission men must be inspected "until the Commission first is satisfied that it can upon the strength of that testimony, make the order you want," Mr. Cowan, attorney for the complainant, answered (p. 244):

> "While assignments were made to the secretary of the Cattle Raisers Association, that was a mere matter of trust in order that he might have control of them for the purposes of the suit. *He was not really an interested party; he was only an assignee for the purposes of handling the case.*"

However, when the second hearing came on counsel for the complainant shifted his ground somewhat, but he made it even more clear than it was before that the shippers of the cattle never had parted with their interests in the claims—the litigation was to recover for them individually damage which they were said to have sustained by the payment of a rate reduced (p. 253):

> "Commissioner Prouty: * * * In how many do you ask to have an order made in each one of these cases?
>
> Mr. Cowan: I think the simple way to do that, and I have thought about that some, is to *have it made in the name of the Cattle Raisers Association of Texas*, account of and for the shipper, the Association being the representative of the shipper. We file our claims in each case—
>
> Commissioner Prouty: Have you an idea that you could bring suit in court in the name of the Cattle Raisers Association?
>
> Mr. Cowan: Well, that difficulty also was very thoroughly considered, and for that reason, when these claims were filed we aimed to put in the names of the shippers, thinking if we had to bring the suit in court—
>
> Commissioner Prouty: Would not the simple way

be to enter up in all cases an order in the name of the shipper?

Mr. Cowan: I think so, but I think the Cattle Raisers Association, so far as the order of the Commission is concerned, could be considered the agent, because it has been the agent and representative, and I am disposed to think under the present act to regulate commerce, that the Cattle Raisers Association could maintain a suit, and we have the right to consolidate against all railroads and all shippers."

Near the close of the final hearing, after the Commissioner had apprized counsel for defendants that "before making a finding we will draw up a statement of what it is proposed to find and make service on the parties so that they can see just what we propose to find," a promise which never was kept, the Commissioner again returned to the anomalous state of the record on the right of anybody to an award (p. 293):

"Commissioner Prouty: There is one thing more, these shipments were made and the freight paid by a great many different persons. My understanding is that there has been some sort of an assignment of these claims to the secretary of the Cattle Raisers Association or to the Cattle Raisers Association. Now, do you ask the Commission to make the order in favor of the original shipper, or do you ask the Commission to make it in favor of the assignees, and if so, what evidence do you offer of the fact of the assignment?

Mr. Cowan: Assignments have been made as a mere matter of I should say, supererogation, you might call it, or overabundance of caution, by a very large number of the shippers.

Commissioner Prouty: *You might more properly style it a super-complication.*"

And at the last minute of the third hearing the Commissioner raised the question again (p. 300). He went back to the only signed assignment that had been exhibited, that of Mrs. Adair, who had not signed it, the sig-

nature having been written by her bookkeeper (p. 297) without any showing of his authority to do so:

> "Commissioner Prouty: You desire us, of course, to find that Mrs. Adair shipped 135 cars, paid the freight and made the assignment?
>
> Mr. Cowan: Yes.
>
> Commissioner Prouty: And that some other person shipped a certain number of cars, paid the freight and made the assignment? In other words, you want a finding as to the transaction of each individual, showing the assignment by that individual to Mr. Crowley or Mr. Spiller?
>
> Mr. Cowan: Yes, but I do not want to bar these people who are just as much entitled to collect as the people who are here in these admitted claims. For that reason we want to make the proof in the balance of the case."

There is the record as to who should have the award of reparation, whether the individual shipper, or the Cattle Raisers Association, or the assignee. On that confused and confusing record an award was made to the assignee as owner, contrary to a then long-standing conference ruling (No. 362) of the Commission to the effect that no award of reparation would be made to a stranger to the transportation contract, as follows:

> "In awarding reparation the Commission will recognize an assignment by a consignor to a consignee or by a consignee to a consignor, but will not recognize an assignment to a stranger to the transportation record."

That had been in effect since June 4, 1912, and has never since been out of effect. It was passed to amend an earlier conference ruling (No. 246) reading as follows:

> "While it is the policy of the Commission to entertain complaints instituted on behalf of shippers by traffic or credit bureaus, in all such cases where reparation is awarded, the order will require payment to be made by the defendant carriers either to the consignor or the consignee, as their interests may appear."

That is, the Commission never would recognize a right in an assignee or in any other stranger to the transportation contract. It had in view evidently the language of Section 8 making any common carrier "liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violations or provisions of this act"; and it knew that Section 9 gave the right of recovery definitely and only to "any person or persons claiming to be damaged," who were authorized to "bring suit in his or their own behalf for the recovery of the damage for which such common carriers may be liable under the provisions of this act."

The Commission allowed either the consignor or the consignee to recover, as their interests might appear, because of the well-known fact that title to the consignment depends upon the contract between the consignor and the consignee. If the consignor addresses the consignment to the consignee without any limitation, then title immediately vests in the consignee upon delivery of the shipment to the carrier. But even then, the consignor has the right to stoppage in transit. Again, the consignor may address the shipment to himself or to some other person at destination with an order that it be delivered to some one to be notified upon payment by that person of the draft attached to the bill of lading, in which case title remains in the consignor until the draft has been paid, and until the bill of lading thus taken up is presented to the carrier it will not make delivery. Aware of this practice, it was necessary for the Commission to award reparation to either of the parties to the shipping contract, as his interest might appear; but it knew that under Sections 8 and 9 it could not award reparation to any but a damaged shipper, and so conference rulings 246 and 362 were promulgated to govern in reparation cases and to notify the shipping world that

assignees not only, but even the freight bureaus, associations and societies, authorized by Section 13 to file complaints on behalf of the public in general, could not expect to receive awards. But those two conference rulings of the Commission, invariably observed by it before this order and invariably observed down to date, were disregarded by it in the award to Spiller.

In litigated cases also the Commission has invariably (except in the Spiller case) applied the principles of the conference rulings which have been cited.

Returning to the claim of counsel for the complainant which was made at the beginning, that the order should be made in favor of the individual shippers, Commissioner Prouty brought on this colloquy in the last hour of the final hearing (p. 297):

> "Commissioner Prouty: Take the claim of Mrs. Adair, was that claim assigned?
>
> Mr. Williams: Yes, sir.
>
> Commissioner Prouty: Have you the assignment there (document handed to the Commissioner)?
>
> What do you say, Mr. Cowan, as to the right of the owner to ask for an order, after having made this assignment?
>
> Mr. Cowan: I do not think the owner has the right, after having made the assignment, to ask for an order. After having made the assignment, I think the assignee has the right."

He had previously said (p. 244) that Spiller "was not really an interested party; he was only an assignee for the purpose of handling the case."

It having been stated at the beginning that the party in interest was the shipper and that Spiller was an assignee without interest who appeared in his capacity "for the purposes of handling the case," and it later being claimed that the Cattle Raisers Association was the agent of the shipper and that the order for reparation should be made in its favor because it had filed

claims with the Commission, and it having been admitted still later than the assignments to Spiller were made "as a mere matter, I should say, of supererogation," and it finally having been determined by the Commission—without a whit of evidence to disprove those statements—that the award of an enormous amount of money should be made to Spiller as assignee, why should not the Circuit Court of Appeals have held that, even if there had been evidence to prove an assignment of the claims to Spiller, it was still "necessary for him to show such an assignment of the claims as would vest him with the legal title thereto if the award was made to him"? The record was fully made up that Spiller was only a nominal assignee. That was stated repeatedly. Without any proof—and without any attempt at evidence that he was an assignee for value and the real party in interest—counsel asked that the enormous award be made to him and the Commission granted that request—but with a warning, however, that "*you must assume the responsibility if you ask the Commission to make that kind of an order.*"

On the foregoing record the Circuit Court of Appeals said (f. 426):

> "On the undisputed evidence, therefore, the legal title to the claims for reparation never vested in Spiller and the Commission was wholly without authority to cause the order of reparation to be made to him. He was not a shipper or owner of cattle and of course was not injured through any act of the carriers. The Commissioner conducting the hearing was much in doubt himself as to whom the order of reparation should be made and the report of the Commission states that it was made to Spiller because his counsel so requested, being willing to take a chance.
>
> * * * Our conclusion is that there was not sufficient evidence to support the finding of the Commission, that the claims had been legally assigned to

Spiller, and that conceding there was, the evidence showed that the purpose of the assignment was not such as to vest the legal title of the claims in Spiller so as to authorize the Commission to make the award of damage to him."

On the record this court, we respectfully submit, should reach the like conclusion.

SECOND.

SPILLER AS ASSIGNEE IS NOT WITHIN THE PROVISIONS OF THE ACT TO REGULATE COMMERCE, AND THE INTERSTATE COMMERCE COMMISSION WAS WITHOUT JURISDICTION TO ENTERTAIN A CLAIM PREFERRED BY HIM.

I.

The question of the jurisdiction of the Commission to pass upon the legal point whether an assignment had been made which divested the shipper of his right was considered by the Commissioner at the last of the three hearings on reparation (p. 297):

"Commissioner Prouty: Take the claim of Mrs. Adair, was that claim assigned?

Mr. Williams: Yes, sir.

Commissioner Prouty: Have you the assignment there? (Document handed to the Commissioner.) What do you say, Mr. Cowan, as to the right of the owner to ask for an order, after having made this assignment?

Mr. Cowan: I don't think the owner has the right, after having made the assignment, to ask for an order. After having made the assignment, I think the assignee has the right."

The Commissioner had previously (p. 253) stated the whole matter in a direct inquiry:

"Would not the simple way be to enter up in all cases an order in the name of the shipper?"

He had previously (p. 243) said to counsel for Spiller:

> "It is for you to determine whether or not you are satisfied to rest on that proof. * * * But you must assume the responsibility of defending that order if the Commission sees fit to enter it."

Finally (p. 298) he said to counsel for Spiller:

> "You have the thing all mixed up here so I would not have any idea what ought to be done."

His belief was, and he was absolutely correct, that under the Act the Commission could make an order to no one but the shipper—that is, "any person or persons claiming to be damaged by any common carrier subject to the provisions of this act,"—that damage to accrue only to a shipper out of "anything done or omitted to be done by any common carrier * * * in contravention of the provisions thereof."

In the District Court the carriers specifically raised (f. 58) the point "that neither the plaintiff Spiller nor his alleged assignor Crowley was authorized by the Act to Regulate Commerce to file claims for reparation with the Interstate Commerce Commission"; and that "the Interstate Commerce Commission was without jurisdiction to entertain the claims filed by the plaintiff Spiller and by said Crowley."

The refusal of the trial court to make those declarations of law (f. 388) was assigned as error by the carriers; and the question was fully presented to the Circuit Court of Appeals.

In the Circuit Court of Appeals the brief for the carriers reviewed numerous decisions of this court and of other courts to show that statutes granting special rights to designated persons, as the right to redress is given to shippers only by Sections 8 and 9 of the Act to Regulate Commerce, cannot be extended by construction; and

that therefore the Commission was without jurisdiction to entertain a claim preferred by Spiller as assignee. But as the Circuit Court of Appeals held (f. 426) that "on the undisputed evidence, therefore, the legal title to the claim for reparation never vested in Spiller," and as it also held that the award by the Commission was without evidence to support it and was based on "the worst kind of hearsay," it concluded by stating that "we have not found it necessary to discuss or decide the other question raised by counsel for defendants."

However, the question of the jurisdiction of the Interstate Commerce Commission to entertain under Sections 8 and 9 a claim by an assignee—a stranger to the Act as well as to the shipping contracts—is always in the case and can properly be raised at any stage of the litigation.

Section 8 of the Act provides that if any carrier shall do or cause to be done anything prohibited or declared unlawful by the Act it "shall be liable *to the person or persons injured thereby* for the full amount of damages sustained in consequence of any such violation."

Nothing could be more explicit. It was not necessary for Congress to make the supplemental statement that the carrier should not be liable to anybody else. It is provided by Section 9 as follows:

> "That any person or persons *claiming to be damaged by any common carrier* subject to the provisions of this act may either make complaint to the Commission as hereinafter provided for or may bring suit *in his* or *their own behalf for the recovery of the damages* for which such common carrier may be liable under the provisions of this act."

The remedy is confined by the plain language used to the person (the shipper) injured. It was for the shipper's protection that the statute was passed and to him that the remedy was given. The only person or persons

who may sue are those who bring suit "in his or their own behalf," and the law excludes a suit by one person on behalf of another. Congress did not intend to provide a remedy to one who might simply speculate in the alleged injuries of others. Barratry and maintenance are not favorites of the law.

Commenting upon the language of Section 9 regarding the recovery in an action at law, the Supreme Court of the United States said:

> "The power of courts to award damages to those claiming to have been injured, as provided in the section, contemplates only a decree in favor of the individual complainant redressing the particular wrong asserted to have been done."
>
> *Texas & Pacific, etc.* v. *Abilene, etc.*, 204 U. S., 426 (442).

That is, Spiller is not "the individual" to whom any carrier did "the particular wrong asserted to have been done." While our point was not up in the Abilene case, this Court was nevertheless making an exhaustive and close analysis of the powers of the Commission. Its language is therefore very apposite here.

Congress created a special tribunal for the relief of shippers from grievances peculiar to them. The Interstate Commerce Commission as this special tribunal *had no jurisdiction in the first place to entertain a complaint for reparation by any person except one claiming to have been damaged as a passenger or a shipper by the carrier in its transaction with him as a public service company.*

Where special rights are granted by a special act, and the language of the law is clear, the provisions will not be extended to others:

> "The courts will not extend or enlarge the liability

> by construction. They will not go beyond the clearly expressed provisions of the act. Statutes which create a liability in favor of 'the widow and next of kin' of a person whose death has been caused by negligence are of this class. Actions founded on these statutes must strictly conform to them. *Such an action* cannot be given by implication. *Relief or remedy provided is not extended to any other persons than those mentioned in the statute.*"
>
> Sutherland Statutory Construction, Section 371.

Where a statute of Kansas made either duplicate of a bill of lading conclusive proof of the amount of grain loaded in a car in an action for loss brought by "the *consignee* or his heirs or assigns," and also allowed attorney's fees, it was held that the consignor, who was the owner of the grain, could not maintain an action under that statute, as he was not named in it.

Weber v. *Chicago, etc.*, 69 Kansas, 611; 77 Pac., 533.

The Supreme Court of Louisiana, in a case decided October 19, 1914, held that the widow and minor children of a deceased railway employee could not maintain an action brought under the Federal Employers' Liability Act for his death while engaged in interstate commerce, as that statute gives a right of action to the "personal representative"; and that as, under the decisions, the Federal Employers' Liability Act supersedes all state laws in so far as the state laws cover the same field, the widow and children, having elected at trial to proceed under the state law, could not maintain the action because the state law had been superseded. Dismissal was ordered without prejudice to the bringing of an action under the federal law.

Penny v. *New Orleans, etc.*, 135 La., 962; 66 Southern, 313.

In the foregoing case the court quoted from *American Railroad Co.* v. *Birch*, 224 U. S., 547 (556), reversing the judgment of the United States District Court for Porto Rico, the trial court there having held that as the action had been brought in the name of the only persons (the widow and the son of the deceased) for whose benefit recovery could be had if the action had been properly brought in their behalf by the personal representative, the Act of Congress could not be construed as requiring the expensive procedure of appointing a personal representative. The Supreme Court admitted that in that case it looked "like a useless circumlocution," but it said that "the words of Congress are too clear to be other than strictly followed."

The foregoing cases are all the more forcible because of the fact that the Federal Employers' Liability Act not only authorizes the bringing of actions in state courts as well as in those of the United States, but also forbids the removal from state courts of actions there brought. (36 Stat. L., 291.)

Where a statute of Pennsylvania made a carrier liable to the "party injured" for damages treble in amount of the injury suffered, an action was brought by Levi Sensenig, who made the shipments; but before verdict he had assigned the claim to his son. On motion of the defendant railway company the case was dismissed. The Supreme Court held that the right of action was personal to the party injured and could not be assigned. The question considered by the court of last resort was whether, if the treble damages could not be assigned, the actual damages could be transferred; and after reviewing the subject and the cases at some length the court said:

> "Our conclusion in the present case is that whether the action be regarded as for a statutory penalty,

> where the right to recover is given 'to the party injured,' or whether it be regarded as an action sounding in tort, for the recovery of unliquidated damages, in either case the enforcement of the right is *a personal privilege of the party aggrieved, and is not, therefore, capable of assignment.*"
>
> *Sensenig* v. *Pennsylvania, etc.*, 78 Atl., 91 (92).

Likewise the Interstate Commerce Act makes the right of the shipper "a personal privilege of the party aggrieved," and Congress did not write into Section 8 after "the person or persons injured thereby" the words "or their successors and assigns." In a special act, framed in a special way to give a new kind of relief to a special class of persons Congress named the persons of that class, but did not name their heirs, successors, or assigns.

Had Congress intended that claims respecting rates should be assignable and subject to such action as we find in the case at bar it would have employed apt language to express that wish.

In *Parsons* v. *C. & N. W. Ry.*, 167 U. S., 447, which was a case involving the right of Parsons, who had paid rates for transportation in excess of rates charged to shippers of similar goods, to recover from the defendant the excess of such payments, the court says on page 445:

> "His cause of action is based entirely on the statute, and to enforce what is in its nature a penalty."

Again the court says, on page 460:

> "The only right of recovery given by the Interstate Commerce Act to the individual is to the 'person or persons injured thereby for the full amount of damages sustained in consequence of any of the violations of the provisions of this act.'"

The Interstate Commerce Commission itself has recognized the doctrine in a general conference ruling, *supra*, and has followed it in every case except the present

one, in which, as we have pointed out, it made an award of reparation in favor of an assignee upon the special request (p. 125) of assignee's counsel. The Commission took pains to make its record show that it was awarding to an assignee upon request.

Probably no subject has received more attention from Congress during the last quarter of a century than interstate commerce, and we must therefore assume that it was so well informed that it would be impertinent in us to interline and enlarge its declarations in this regard. Before it wrote its views and wishes in Sections 8 and 9 and in the other sections it had appointed committees, as this court has pointed out, to make exhaustive investigation of the subject.

When Congress felt that the heirs of a man suffering a personal injury should recover for the hurt and pain which he endured as well as for his death, it amended the Federal Employers' Liability Act by inserting appropriate language.

Kansas City Southern v. *Leslie,* 238 U. S., 599.

But in the meanwhile the courts did not undertake to insert such language when Congress saw fit not to do so.

Having examined the Federal Employers' Liability Act and decisions under it to show that statutes granting new rights (as the Interstate Commerce Law does here) must be strictly construed as granting the new rights only to the person named, let us now take a look at other Acts of Congress granting special rights or rights not before existing.

We must proceed with the assumption stated by a United States District Court, where the question was up as to whether an action survived to the representative of an injured person for the injury when he died of some

other cause, and where, after pointing out the almost unlimited study which Congress had given to the legislation, the court said:

> "But whatever Congress may have intended to do, it has not done so, and the courts must confine themselves to the administration of the law, and neither add to nor take from a statute where its language is clear and unambiguous."
>
> *Fulgham* v. *Midland Valley R. Co.*, 167 Fed., 660.

Patent rights, like the rights to secure reparation conferred upon a shipper by the Act to Regulate Commerce, are statutory grants. No one can take under the patent laws anything not clearly specified as accruing to him through those laws. Knowing this and feeling that certain interests in patents should go to the heirs or assigns of the patentee, Congress declared (February 28, 1899) in the patent laws that the grant should be to the patentee, "his heirs or assigns, for the term of 17 years." It has also provided that "every patent or any interest therein shall be assignable in law." No "construction" is required there. It provided further that when any person who has made a new invention or discovery for which a patent that might have been granted dies before a patent is granted the right of applying for and securing the patent shall devolve upon the administrator "in trust for the heirs at law of the deceased," or for those mentioned in his will.

30 Stat. L., 915.

Previously, on March 3, 1897, it had enacted that whenever any patent becomes inoperative or invalid for certain errors or inadvertences the commissioner may cause a new patent to issue "to the patentee, or, in case of his death or of an assignment of the whole or any undivided part of the original patent, then to his executors,

administrators, or assigns, for the unexpired term of the original patent."

29 Stat. L., 693.

And so on throughout all the patent laws we find clearly expressed the desire of Congress to allow the inventor to assign and the heirs of the inventor to take.

Congress never seemed short of words to express its wishes as to patents.

Neither did it fail to say just what it wanted to when it enacted the Employers' Liability Act. Concluding that the first act should be enlarged, it enlarged it. In the meanwhile the courts very properly refused to do so.

It would be strange, therefore, if when Congress wrote Sections 8, 9, 13 and 16 of the Act to Regulate Commerce it failed of speech and thereby left it to the courts to interject the words "or his or their assigns" where it had written only "the person or persons injured thereby" and the "person or persons claiming to be damaged."

Turning to the Trade-Mark Act, we find that it was amended (32 Stat. L., 727) so as to provide for the assigining of registered trade-marks. When they were not assignable and Congress thought they should be assignable it made them assignable. But the courts did not do it.

Section 1 of the Law of Copyrights grants certain rights to the author, inventor, designer or proprietor of any book, etc., *and* also to the *executors, administrators, or assigns* of any such person.

26 Stat. L., 1106.

Words did not fail Congress there.

An earlier act provided that copyrights—not mentioning registered—shall be assignable in law.

16 Stat. L., 213.

The foregoing special statutes granting special rights are referred to for the purpose of illustrating further that Congress did not write the word "assignee" or anything like it in the Act to Regulate Commerce and that Congress is the only authority that has anything to say upon the subject.

That Congress did not, by omitting the word "assignees" from the Act, intend that it should be included by implication is obvious from the fact that in Section 9 it limited suits for the recovery of damages to those brought by a person or persons "in his or their own behalf." Plainly this language excludes the idea that a suit may be brought by an assignee.

Counsel for Spiller rely (brief, p. 93) upon the language contained in Section 16 of the Act permitting "the complainant or any person for whose benefit such order was made" to sue in the Circuit Court. But the entire force of that contention is destroyed by the construction which the United States Supreme Court put upon the language in the case of *Phillips* v. *Grand Trunk Ry. Co.*, 236 U. S., 662. The history of that case is as follows:

After a number of lumber companies had brought a suit for injunction in the United States Circuit Court of Georgia (123 Fed., 789) to restrain the taking effect of an advance of rates, which proceeding was, of course, a protest to the carriers and a notice to them amounting to a liquidation of damages, it was stipulated as a condition of dissolving the injunction secured, that a proceeding should be brought before the Interstate Com-

merce Commission to inquire into the validity of the rates advanced, which was done. (10 I. C. C., 548.) The Interstate Commerce Commission held the rates unreasonable, and in pursuance of the said stipulation the carriers were required by the court to make refunder of the advanced rates collected during the time that the Commission was passing upon the question of reasonableness.

Southern Railway Company v. *Tift*, 206 U. S., 428 (436).

The Phillips Company, which was not a party, thereafter brought an action in the federal court to recover the stipulated overcharge, and reference to the report of the Commission awarding reparation was made a part of the declaration. The point was raised that as the Phillips Company was not a party before the Commission it had no standing in court. The Supreme Court of the United States said:

> "The inquiry as to the reasonableness of the advance was general in its nature. The finding thereon was general in its operation and inured to the benefit of every person that had been obliged to pay the unjust rate."
>
> *Phillips* v. *Grand Trunk Railway*, 236 U. S., 662 (665).

It will be noted that the Supreme Court in the Phillips case construed that language to apply only to *persons* who had been obliged *to pay* the unjust rate.

The plaintiff failed, however, in that case because it did not file its claim within the statutory time; but the decision of the Supreme Court illustrates the meaning of "a person for whose benefit the order was made" under Section 16.

Congress did not have in mind an assignee or broker. On the contrary, the language quoted is more limited

than that which Congress formerly used. Section 16 of the act as first passed (24 Stat. L., 384), in 1887, made it "lawful for any company or person *interested* in such order or requirement to apply in a summary way by petition to the Circuit Court of the United States" to enforce it. The same words appear in Section 16 as amended March 2, 1889. (25 Stat. L., 859.)

But by the amendment of Section 16, made June 29, 1906 (34 Stat. L., 590), the right of any party "interested" to proceed is narrowed to "the complainant or any person for whose benefit such order was made."

Had the original language of Section 16 been retained by Congress there might, possibly, be some ground to contend that an assignee comes within the description of "a person interested." But as we have seen from the Phillips case, *supra*, the person for whose "benefit" an order is made by the Interstate Commerce Commission is any shipper in the country whose freight may be affected by the Commission's order reducing rates, and not any assignee.

Far from showing a desire that these claims should become the subject of speculative traffic, Congress, by its explicit language in Sections 8 and 9 in *naming* the beneficiaries, as well as by its narrowing of the application of Section 16, expressed an intention to give redress to a shipper who has been damaged by the unlawful conduct of a common carrier, and to him alone. The Commission itself never held otherwise until it decided this case.

From the foregoing examination of the law it is manifest that Spiller as alleged assignee does not come within the Act to Regulate Commerce.

Since this case was passed upon by the Circuit Court of Appeals our contention in the foregoing pages has

received authoritative sanction in the decision of this Court in *Southern Pacific Company et al.* v. *Darnell-Taenzer Lumber Company et al.* (January, 1918), 245 U. S., 531, where the question was up for determination as to when a shipper is damaged by the collection of unreasonable freight rates. There the carriers contended that the shipper had put the charge in his price to the consumer. This Court said (pp. 533-4):

> "The only question before us is that at which we have hinted; whether the fact that the plaintiffs were able to pass on the damage that they sustained in the first instance by paying the unreasonable charge, and to collect that amount from the purchasers, prevents their recovering the overpayment from the carriers. The answer is not difficult. The general tendency of the law, in regard to damages at least, is not to go beyond the first step. As it does not attribute remote consequences to a defendant so it holds him liable if proximately the plaintiff has suffered a loss. The plaintiffs suffered losses to the amount of the verdict when they paid. Their claim accrued at once in the theory of the law and it does not inquire into later events. *Olds* v. *Mapes-Reeve Construction Co.*, 177 Massachusetts, 41, 44. Perhaps strictly the securing of such an indemnity as the present might be regarded as not differing in principle from the recovery of insurance, as *res inter alios,* with which the defendants were not concerned. If it be said that the whole transaction is one from a business point of view, it is enough to reply that the unity in this case is not sufficient to entitle the purchaser to recover, any more than the ultimate consumer who in turn paid an increased price. He has no privity with the carrier. *State* v. *Central Vermont Ry. Co.*, 81 Vermont, 459. See *Nicols, Stone & Myers Co.* v. *Louisville & Nashville R. R. Co.*, 14 I. C. C. 199, 207-209; *Baker Manufacturing Co.* v. *Chicago & North Western Ry. Co.*, 21 I. C. C. 605. The carrier ought not to be allowed to retain his illegal profit, and *the only one who can take it from him is the one that alone was in relation with him, and from whom the carrier took the sum.*"

That is, "a stranger to the transportation records," to use the language of the Commission's Conference Ruling No. 362, who never in fact paid any freight, cannot "take it from" the carrier.

That excludes Spiller.

II.

Even on the assumption of counsel for Spiller that the claims for reparation are assignable, which we deny, in the face of the clear provisions of the act, and that proof of the assignments was made, it is certain that the Interstate Commerce Commission was without power to hear Spiller and pass upon his claim. The reason is obvious. The Interstate Commerce Commission, a special tribunal of limited jurisdiction, is in no sense a court. Indeed, it is so far from being one that it was necessary to make provision in the Act for the trial of reparation questions in the District Court of the United States in order to meet the requirements of the Seventh Amendment guaranteeing a trial by jury. Having no inherent power as a court of general jurisdiction, the Commission has of course no judicial authority to determine whether a person is an assignee, whether the thing which might be the subject of the assignment was in reality legally assigned, whether the person who made the assignment was competent to give it, or whether the person who received the assignment was competent to receive it.

The Commission being without judicial power to determine rights as between assignor and assignee, its attempt to make a judicial determination of such a matter in a reparation case would leave without a remedy the assignor or the assignee against whom the Commission

might make a finding, for no bill of exceptions or other record could be made upon which error could be predicated for hearing in an appellate court. Such a finding would be *coram non judice* and void. That being true, that part of the finding beyond its jurisdiction did not have in the District Court that *prima facie* character which Section 16 gives to "the findings and order of the Commission," for they are *prima facie* evidence only "of the *facts* therein stated"—not of rulings upon and adjudication of legal questions. Accordingly, in the District Court the introduction in evidence by Spiller of "the findings and order of the Commission" proved nothing at all as to the right of Spiller to a judgment. The District Court, therefore, erred in refusing the declarations of law requested by the carriers (f. 58), that the Commission "was without jurisdiction to entertain the claims filed by the plaintiff Spiller," and that Spiller was not authorized by the Act to Regulate Commerce to make a claim for reparation.

Even if Spiller was in law an assignee, it was necessary for him to support in the District Court his allegation that he was the lawful holder of the assignments; for the answer of the defendants (f. 44) denied that he was.

The jurisdiction of the Commission—its power to proceed—is limited by Section 13 to dealing with and disposing of "anything done or omitted to be done by any common carrier subject to the provision of this act, in contravention of the provisions thereof"—something done or omitted to be done with respect to any individual who approaches the carrier as either a shipper or a passenger and has the legal right to treatment to which he is by the carrier denied. The passenger or the shipper, and the rights to which he is entitled, are the only

things within the jurisdiction or authority of the Commission. It has no power whatever to deal with the question raised by Commissioner Prouty (p. 297) "as to the right of the owner to ask for an order after having made an assignment." The Commissioner had the correct idea (p. 253) when he inquired, "Would not the simple way be to enter up in all cases an order in the name of the shipper?" There was a plain recognition of the very plain limitation drawn by Congress about his jurisdiction. He was empowered by the act to deal with Spiller no more than he was to deal with some proponent of a will, or some insolvent seeking a court in which to file a petition and be adjudged a bankrupt.

THIRD.

THE BRIEF FOR PLAINTIFF IN ERROR CONTAINS NOTHING COUNTERVAILING THE FOREGOING PROPOSITIONS.

It is our purpose to examine the contentions in the brief filed in this Court on behalf of Spiller and to show that they do not in any sense meet the propositions which have been asserted and argued for the carriers.

The arguments in the brief for Spiller are comprehended under the three statements following:

1. That the evidence was sufficient;

2. That the so-called admissions of the carriers and their alleged failure to interpose objections made a case for Spiller; and

3. That the assignments to Spiller were sufficiently proved and that they vested in him such legal title as justified the award.

We shall look at those briefly in the order stated.

That will be followed by an examination of Spiller's authorities and by miscellaneous comment on the brief.

I.

On the proposition that the evidence before the Commission was sufficient to support the award the brief first takes up (p. 53) the argument that the Commission "is an investigating body and not bound by the strict rules of evidence." As to that, we have cited decisions by this Court holding that "the more liberal the practice in admitting testimony, the more imperative the obligations to preserve the essential rules of evidence by which rights are asserted or defended." One of the cases (227 U. S., 93), cited in the brief for Spiller, is the one from which the foregoing quotation is made.

In addition to arguing for the practical absence of rules in the taking of testimony, the brief assumes (p. 56) facts which it was Spiller's burden to prove. Thus it says that "all the shipments were made to commission houses for sale on the market for the owners," underscoring "for the owners." But who were they? Again, the brief says (p. 56) that the commission companies furnished the Cattle Raisers Association with slips showing "only the names *of the owners,*" again underscoring "of the owners." But the Commissioner and counsel for Spiller both admitted the necessity of producing the books showing who the owners were. For reasons of his own counsel for Spiller decided not to produce the books and expressed a willingness to "take a chance" on the so-called record as made. That record contains no proof of anybody's ownership of anything.

Seeking to show that the carriers admitted ownership by checking the statements, the brief mentions at page 58 and again at page 61 that Mr. Fletcher of the Illinois Central and Mr. Norton of the Santa Fe asked leave to withdraw the exhibits which their companies had checked

"for the purpose of allowing the carriers to check the names of the owners as shown on the list with the consignors as shown by the carriers' books, which was done."

That is not so. The implication of the brief that the carriers thereby found who the owners were is entirely unwarranted. Mr. Fletcher said (p. 264), referring to the disclosure that many of the shipments were made in the names of caretakers, that he desired to ascertain "whether the consignor named there is the consignor named in the billing" of the carrier, "or whether they"—meaning the auditors of his company—"just took it for granted that he was." Indeed, Mr. Fletcher raised the very doubt (p. 264) which Mr. Wood of the Frisco had previously expressed, namely, that his auditor had questioned whether in the sheets the real consignor was named. Of course, as the billings of the carriers showed caretakers in many if not in most instances, no checking that they could do would put of record the name of the true owner of the freight. When they submitted their checking the very point now argued in the brief was raised and disposed of once for all (p. 251):

> "Commissioner Prouty: Now, the admission of the carriers would apparently show that somebody made a shipment, Aaron & Hughes perhaps made a shipment on that date and paid that rate and are entitled to the $13.20. Do you concede, Mr. Norton, that Aaron & Hughes paid the $13.20?
>
> Mr. Norton: No, all that we show by that is that this car did move as stated, and that we collected there the amount specified in Mr. Cowan's sheet."

The record so remained until the last hour of the last hearing when the condition of it was stated by the Commissioner as follows, addressing himself to counsel for Spiller (p. 290):

"Mr. Cowan: I want to take an order for the

claims that have been admitted. I want to take a chance.

Commissioner Prouty: You understand there has not been anything admitted; that is to say, these railroads have not admitted you are entitled to any money. They have admitted the movement of certain cars, and they earnestly insist you are not entitled to recover."

The Commissioner well knew that the shipping papers of the carriers related largely to caretakers. For that reason it was impossible for the carriers to have admitted anything as to ownership.

When Mr. Norton of the Santa Fe asked leave to withdraw the exhibits for further examination (p. 268) it was because the auditors had not retained copies of the data which they had searched out and he did not want to let go of it without a record (p. 268):

> "I was talking with the auditing department and they neglected to draw off certain facts and data, the number of the billing and so forth, and I would like to take this long enough to have that done."

There is absolutely no warrant in the record for the assumption made at page 58 and again at page 61 that any rechecking or further examination of the sheets by the carriers brought into the record proof of the ownership of any carload by any man.

Opposite page 60 of the brief, carriers' Exhibit 2, introduced at page 308 of the record, is reprinted with a note on the bottom which shows that by that exhibit and by the checking the carriers admitted only the movement.

II.

Supplemental to the contention that the record before the Commission was sufficient to support the award it is argued in the brief that the admissions of the carriers

on one hand, and their failures on the other hand to make objections, resulted in a very good record for Spiller.

As to Admissions.

At page 59 of the brief it is stated—

> "that the reason the books were not examined was because the carriers checked the claims with their own books and admitted the movement of the freight as stated, and that the Commissioner understood from the admission made that the only question left open was whether the shippers were damaged."

That is decidedly not so. Nor did the Commissioner understand it so. What he understood, precisely, was quoted only a few lines above, "You understand there has not been anything admitted."

Beginning at page 63 of the brief for Spiller a long quotation is offered "as a sample of the admissions made by the railroads in their checking up of the claims." We give attention only to the following so-called admission (p. 66), made by Mr. Williams, the only witness for Spiller, who never was employed by, who never in any way represented any of the carriers, and who therefore could make no admission against them. The record page is 278:

> "Commissioner Prouty: So that the items put down in your tabulation as against the Santa Fe are all admitted by the Santa Fe in the same detail as these items are?
>
> Mr. Williams: In this detail, yes, sir."

Of course that was a self-serving statement. Mr. Williams not only had no information, but he made no attempt to get it, for this immediately follows the foregoing quotation:

> "Commissioner Prouty: Do those cars correspond to the detailed statement which you filed? In other words, can you identify 135 of the cars with respect to which you filed a claim, as those 135 cars?

> Mr. Williams: I have not attempted to identify them that way. *I took it for granted that they acknowledged those claims by furnishing us with this information,* when we filed it with them."

The complainant at the hearing "took it for granted," the plaintiff in the District Court took it for granted, and the plaintiff in error in his brief is now taking it for granted.

At page 71 of the brief it is said:

> "We do know that some of the carriers conceded the names of the consignor and consignee given on the list furnished by the claimants agreed with their own records. The M. K. & T. did (Rec., 285); the C. & A. did (Rec., 286); the Chicago & Eastern Illinois did (Rec., 287); the Illinois Central did (Rec., 287); the Rock Island did (Rec., 282); the Mo. P. and St. L. I. M. & S. did (Rec., 283); the Frisco did not, but conceded that if the books of the commission companies showed the names of the owners identified with the shipment that would be evidence who paid the freight. (Rec., 262.)"

Not a statement in the foregoing quotation is upheld by the record. The Frisco not only did not make the concession attributed to it, but Mr. Woods, counsel for the Frisco, pointed out (p. 262) that "there were very many discrepancies between the name of the consignor as shown on this exhibit and the name of the consignor as shown on the waybill, so that as checked these show that cars did move between those points." That is true of all the checking—that the carriers found that the cars moved, but of course found and therefore admitted nothing as to ownership.

Mr. Fletcher, counsel for the Illinois Central, said (p. 263) that he was without information as to individuals and that "*it would all have to be proved as to whether*

the books referred to the same shipments as here shown." He said also that "whether it would establish it or not I would not undertake to say now." In addition to that the record shows (p. 287) that in filing its checking of the exhibits the Illinois Central presented a motion in writing to dismiss. Mr. Humburg, counsel for the Illinois Central, stated for his company (p. 287) that "the statement we have submitted to Mr. Williams will speak for itself. Beyond that we do not know what the situation is."

The Chicago & Eastern Illinois was not present (p. 287), and therefore it admitted nothing. Neither was the Chicago and Alton present (p. 286); but the Chicago and Alton had written a letter to Williams returning the statement and saying that it did "not admit anything."

The Missouri, Kansas and Texas said (p. 285) that "our checking only went to the extent of checking the movement." Mr. Burg, counsel for that company added that "I think" that the names on the sheets of complainant "in almost every instance" tallied with the names of his company's waybills.

We repeat, the language quoted from page 71 of the brief is denied absolutely by the record.

At page 57 of the brief a quotation is made from the record showing that Mr. Brooks, live stock agent of the Santa Fe, admitted that the books of the commission companies would show the name of the owner. Then why were the books not produced? They were the best and only evidence of what they contained and the only legal proof of who the owners were, and counsel for Spiller had more than once said that the commission companies would willingly produce them for him, which he did not cause them to do. Again, the same

conversation shows (p. 215) that the billings or shipping papers of the carriers contained no information from which they could have made any admissions as to ownership, payment of freight, or damage:

> "Mr. Cowan: Your billing does not show the name of the owner?
> Mr. Brooks: No.
> Mr. Cowan: The commission company's books, however, show the name of the owner?
> Mr. Brooks: Yes."

Immediately following that quotation of the conversation between Mr. Cowan and Mr. Brooks, quoted on page 57 of the Spiller brief, is the following most significant statement by Spiller's counsel (pp. 215-216):

> "Mr. Cowan: And for whom the freight was paid, and for that reason it seems to me the commission company's books are the ones to show who really paid the freight, and if you went and got all your tickets they would show the caretaker and not the owner of the cattle."

As to Failure to Object.

At page 9 of the brief for Spiller exception is taken to the holding of the Circuit Court of Appeals:

> "that in proceedings before the Commission, counsel was not required to present objections to inadmissible testimony with the same nicety as in actions in court, and that inadmissible or objectionable testimony, although not objected to when offered before the Commission and although received by said Commission, should not be considered by the court in support of the Commission's order."

The foregoing, which is repeated in specification of error IV at page 49 of the brief, is not a fair statement of what the Court said, which was as follows (f. 425):

> "Of course this testimony was the worst kind of hearsay, but counsel claims that it was unobjected to and therefore in an appellate court the objection

> that it was hearsay cannot be made. We are of the opinion if the proceedings before the Commission are allowed to be conducted in an informal way, so far as the Commission is concerned counsel engaged in the conduct of such proceedings are not required to preserve and protect their rights with the watchful nicety that would be required in courts of justice. Moreover, the record shows in many places where counsel asserted that there was an entire failure of proof, and demanded that the proceedings should be dismissed, so that it cannot be said that counsel acquiesced in the proposition that the tabulated statement together with the admissions of the carriers proved a case for damages against them. * * * The question before us is whether there was any substantial evidence before the Commission to justify its order. Such an inquiry permits us to consider the character of the evidence introduced to support the order."

We thus quote at length because it substantially differs from what the brief says the court held.

The finding by the Circuit Court of Apeals in the foregoing that "the record shows in many places where counsel asserted that there was an entire failure of proof," was in keeping with the statement of the trial court, quoted at page 55 of the brief for Spiller, that "it is true that the defendants insisted that this would be the best evidence" referring to "the books and bookkeepers."

At page 70 of the brief it is stated:

> "No objection was made at the hearing before the Commission as to the testimony being hearsay or incompetent for that reason, but the objection at the close was only to the effect that there was a failure of proof, that the testimony was not sufficient."

Near the close of the second day of the first hearing on reparation counsel for complainant said that the "stockyards company at Kansas City" (not the commission

house which had the necessary information) had declined to furnish data to him, and he continued (p. 240):

> "And I understand your company, Mr. Norton, said to the stockyards company not to furnish the information, and we understand that was stated at St. Louis.
>
> Mr. Norton: *Your understanding is like your evidence, it is only hearsay.*"

Further, in our review of the record we have shown that "the objection at the close" was made at the beginning also and that the statement of the trial court (f. 385) that counsel for the carriers "acquiesced" in something or other "at the earlier stage of the proceedings" was erroneous.

At the very first hearing on reparation, when the Commissioner suggested to counsel for the complainant they should get slips (car records) from the stockyards companies or the commission men (226-7), he answered:

> "Mr. Cowan: We would be very glad to do that if we can do that. So far as the utility of it is concerned, *it does not seem to me to be necessary.*"

Thereupon counsel for the carriers said (227):

> "Mr. Norton: Yes, and we ought to have a pretty plain case against us and one we can check up with reasonable accuracy. As I pointed out a while ago, they have both members and nonmembers here and we ought to have such data presented us *so that we can raise all the legal and proper objections before the Commission.* The showing ought to be complete in all particulars against us."

And yet, as quoted before, the brief for Spiller says at page 70 that sufficient objection was not made. But we have shown by authority that hearsay, objected to or not, is insufficient to support a judgment.

It would be idle repetition further to quote from the record to show that objection was taken to the hearsay

matter. The carriers not only pointed out that primary evidence was accessible, but the complainant admitted that and promised to produce it.

III.

Coming to the question of assignments, the brief itself discloses (p. 36) that counsel for Spiller stated before the Commission that "these claims are prosecuted for the benefit of the owners of these claims," meaning the shippers. To that the assistant secretary of the Cattle Raisers Association answered, "Yes, sir." That being so, and shown to be so by the brief for the plaintiff in error, what standing has Spiller here?

At page 42 of the brief quotation is made from the record regarding the claim of Mrs. Adair, who was in England, and who was not shown to have authorized anybody to execute her assignment. Moreover, as we have already pointed out, as that is the only assignment that was ever exhibited or offered in evidence, all other assignments must be taken to be no better.

The proposition is stated at page 78 that "there was sufficient evidence to support the finding of the Commission that claims had been legally assigned to plaintiff in error." We have just shown that it was admitted on page 36 of the brief that he had no beneficial interest, and aside from the Adair assignment, above commented on, there was no proof whatever that the other claims had been assigned to Spiller.

At page 84 it is said that there was no objection of any kind before the Commission as to the sufficiency of the proof of the assignments. In the light of the record already made, why should there have been. The carriers had no inkling that the order was to be made to Spiller

for his benefit. The statement at the last moment of the last hearing (p. 298) by counsel for Spiller, that he wanted an order in favor of the assignee, did not necessarily mean that he wanted an order for the benefit of Spiller; for he had previously shown that Spiller was acting (p. 253) as an "agent," and did not have title.

And how could they have objected to assignments which never were offered in evidence?

Further, why should the carriers have objected when the Commissioner said (p. 299):

> "I don't think you need to go into that; unless there is some objection we will find the fact of the assignment according to the language of the assignment itself in all these cases in which an assignment has been made, and you indicate in whose favor the order should be made in all cases."

Suppose a trial court were to call the case of A versus B, an action in assumpsit, and to save time and forestall the taking of testimony and the making of proof should say, "I don't think you need to make any proof; unless there is some objection we will find the fact of the" obligation "according to the language of the" pleadings.

In such circumstances if B interposed no objection, would the case be proved?

In any event, as before mentioned, the record did not disclose that the order was to be made to Spiller as the beneficial owner. Only one assignment was exhibited at the trial. That was not executed by the owner of the cattle, and there was no proof that the person who signed her name had been authorized to do so. The carriers never saw any of the other assignments.

IV.

SPILLER'S AUTHORITIES ANALYZED.

The fairest way of discussing the authorities cited by plaintiff in error is to begin at page 52 of the brief and deal with them under the points stated.

On page 53, under Point II, occurs the following:

> "a. The Commission is an investigating body and not bound by the strict rules of evidence.
>
> *I. C. C.* v. *Baird*, 194 U. S. 44
>
> *I. C. C.* v. *L. & N. R. R.*, 227 U. S. 93.
>
> *L. & N. R. R.* v. *Finn*, 235 U. S. 601.
>
> *I. C. C.* v. *C. R. I. & P.*, 218 U. S. 110."

The Baird case had to do with an attempt of the Interstate Commerce Commission to get possession of books and records. This Court held that the carriers might be compelled to produce such documents although their relevancy did not appear, for the reason that in an investigation or inquiry by the Commission it was not bound by the narrow rules of evidence, especially where it was to make no binding order. In that case the Court said (p. 44):

> "It is to be remembered in this connection that we are not dealing with the ultimate fact of controversy or deciding which of the contending claims will be finally established. This is a question of relevancy of proof before a body not authorized to make a final judgment, but to investigate and make orders which may or may not be finally embodied in judgments or decrees of the court."

The second case cited (*I. C. C.* v. *L. & N. R. R.*, 227 U. S., 88) considers the holding in the Baird case and lays down the rule (p. 91) for which we contend, that a finding without evidence is arbitrary and void. On page

93, after citing the Baird case and the rule laid down therein, the court says:

> "But the more liberal the practice in admitting testimony, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended."

That case has been cited and relied upon by us in support of our contention that the record of the Commission, containing nothing but hearsay evidence, was not sufficient to support an order.

The third case cited (*L. & N. R. R.* v. *Finn*, 235 U. S., 601) is not pertinent. That is sufficiently shown by the statement of it by the Circuit Court of Appeals (f. 431):

> "We are cited by counsel for plaintiff to the case of *L. & N. Ry. Co.* v. *Finn*, 235 U. S., 606, as sustaining the proposition that the Commission had sufficient evidence before it to sustain its order. The case cited was a proceeding to recover upon a reparation order made by the Railroad Commission of Kentucky. The contention was made that the order was not supported by substantial evidence. The Supreme Court in considering this contention decided that the Railroad Company admitted by its answer that the rates mentioned had been charged, collected and received by it, but denied that they were extortionate, unjust or unreasonable, and upon this ground and no other denied liability to make reparation. In its opinion the court said: 'In short the record shows that the only question made respecting the reparation claims was the general contention that the rates charged by the company were in fact not unreasonable or extortionate; and that it was in effect conceded that the particular amounts claimed were proper to be awarded as reparation, if the rates charged were determined to be unreasonable and extortionate.'"

The fourth case (*I. C. C.* v. *C. R. I. & P.*, 218 U. S., 110) dealt with the fixing of a reasonable rate. This

Court never reviews that question, which is peculiarly within the province of the Commission.

At page 70 of the brief for Spiller the Finn case is again referred to as "a precedent for asserting that in proceedings before the Commission statements of counsel and other parties, although not under oath, are receivable as evidence."

The Finn case held nothing of the kind.

So much for the decisions cited in the brief under this heading.

On that same page of the brief Sections 13 and 17 of the Act are cited as giving the Commission power to conduct its hearings in any way it may deem proper.

But of course the Commission cannot make an order not founded upon evidence. This was put beyond question by the *Louisville & Nashville case* (227 U. S., 93), *supra*, upon which the carriers rely.

On page 72 of the brief for Spiller the following occurs:

> "C. The evidence on which the award by the Commission was based was not hearsay, but even if it were, it is competent and admissible if not objected to at the time it is offered.
>
> *I. C. C.* v. *Baird*, 194 U. S. 25.
> *I. C. C.* v. *L. & N. R. R.*, 227 U. S. 88.
> *L. & N. R. R.* v. *Finn*, 235 U. S. 606.
> *Kane* v. *Mo. Pac. R. R. Co.*, 251 Mo. 13.
> *Woolf* v. *Edmondson*, 240 Fed. 53.
> Wigmore on Evidence, Vol 1, Sec. 18.
> *Gregory* v. *Dodge*, 14 Wend. 593, 617.
> Wigmore on Evidence, Sec. 586.
> 17 Cyc. p. 564.
> 17 Cyc. Sec. 92, p. 166.
> *Mathis* v. *O'Neal*, 94 Mo. 527."

The first three cases cited are not in point at all.

The fourth case (*Kane* v. *Mo. Pac.*, 251 Mo., 13, 157 S. W., 644) is directly in point for the carriers and lays down the rule for which we contend. Thus the court said (157 S. W., p. 653):

> "We disregard the opinions attributed by witness Hunter to Engineer Green and Fireman Wilcox as to the cause of the wreck. They were incompetent. True, they were not objected to on this ground, and their admission for that reason would not be reversible error; but we are not prepared to hold that a verdict can be sustained on incompetent *hearsay opinions, even if not objected to.*"

In other words, that case holds that hearsay evidence is not sufficient to form the basis of a judgment.

The next case (*Woolf* v. *Edmondson*, 240 Fed., 53) is not in point. That simply decided that where the answer to a question was *not responsive*, but no motion to strike was made, such answer could not be attacked on the ground that it was an estimate.

The next citation (Wigmore on Evidence, Sec. 18) is a discussion of the general subject of objections. Of course an objection is necessary if a party intends to claim the prejudicial effect of the admission of evidence; but the citation has no bearing upon the proposition here, which is that if the record contains nothing but hearsay the court must hold it worthless to support a judgment. It is because of its worthlessness that the court would sustain an objection if made, and therefore it is just as worthless as a basis for a judgment.

The next case cited (*Gregory* v. *Dodge*, 14 Wend., 593, 617) was in chancery and the evidence was given by a witness, A. B., the effect of which was to charge complainant with a debt for which he was individually

liable. The fact that A. B. had an interest would have precluded him from testifying had objection been made to his competency on that ground; but as no objection was made his evidence was received. His testimony was not hearsay.

Wigmore on Evidence (Vol. I, Sec. 586), next cited, deals simply with the time of making an objection to the disqualification of a witness on the ground that he is a party interested in the litigation. It has nothing whatever to do with hearsay.

The next authority cited (17 Cyc., 564) has no bearing on this case, relating, not to hearsay, but to the furnishing of a copy of an original document.

The next citation (17 Cyc., 166) is evidently a misprint, as the text deals with the comparison of disputed handwritings for the purpose of determining the identity of a writer.

Mathis v. *O'Neal*, 94 Mo., 527, is not in point. It holds that a bookkeeper may testify that from seeing certain entries in his own handwriting which he made in the course of his duties he is led to think that the facts stated in them are true. The witness in that case was a bookkeeper who made entries in the course of his duties, which entries were true and correct when made and from which entries the bookkeeper testified. But there is no such situation in this case.

The next authorities cited (1 Wigmore, p. 166; 1 Wigmore, Sec. 94), at page 73 of the brief, do not have any bearing.

On page 74 is the following point:

> "D. The shippers and owners, being in possession of the live stock when delivered to the carriers, were *prima facie* the owners."

In support of that proposition authorities are cited (pages 75, 76) to the effect that the possession of property raises a rebuttable presumption of ownership. The trouble with counsel's case is that he did not give any evidence of ownership at all; neither did he give any evidence of possession. It is significant that no page of the record is cited to support the intimation that there was evidence either of possession or of ownership.

On page 77 is the following heading:

> "E. The carriers cannot question the title of the consignors because the carriers were bailees."

On pages 77 to 78 authorities are cited as sustaining that proposition. It is not necessary that these should be analyzed, as the proposition has no bearing on the case. The difficulty with Spiller's case is that there was absolutely no evidence tending to show the consignors, the consignees, or the ownership or possession. Again it is significant that no page of the record is cited to show the alleged facts.

On page 79 *et seq.*, there are cited several authorities on the following proposition:

> "A. The damages claimed, and for which the award was made arose out of tort, and affected the property and not the person of the shipper. Such causes of action survive the death of the claimant and are assignable."

The cases cited support the proposition that if a cause of action survives the death of the claimant it is assignable; but only one of those authorities holds that a cause of action like the present one falls within the rule, and that is the case of *Edmunds* v. *Ill. Cent. R. R.*, 80 Fed., 78. Of course counsel thereby raises a question upon a point which was not decided by the Circuit Court of Appeals. That Court did not decide whether a claim of this nature is assignable; neither did it decide whether

the Interstate Commerce Commission would have jurisdiction of an action on behalf of an assignee. What the Court held was that there was a total failure to prove that there had ever been any assignments made and that in any event Spiller had not received title sufficient to permit him to sue. But as the brief for Spiller raises the question, it is perhaps our duty to discuss it.

As a general rule it may be stated that causes of action arising out of tort for damages where such causes would descend to the estate are assignable, and this might well include causes of action arising out of statutes; but the distinction is pointed out well enough in an authority cited for Spiller (4 Cyc., page 22, paragraph 9), which reads as follows (italics ours):

> "There is nothing peculiar to rights conferred upon one by statute that in itself forbids the assignment of such rights. As to such rights, it may be said that the assignability or nonassignability of them depends in each case upon the language of the statute conferring the rights. If the statute forbids the assignment of the right conferred by it, or *if the legislative intent, as shown by the act, is to confer a right strictly personal to the person upon whom it is conferred, then such right is not assignable.* In the absence of such express or implied prohibition, the assignability or nonassignability of rights conferred by statute is to be governed by the principles governing the assignability or nonassignability of choses in action in general. *Statutory rights* giving compensation for property loss suffered are, generally, said to be assignable, *whereas rights to recover penalties and rights given by statute for the redress of personal wrongs are not assignable.*"

The brief for Spiller has too readily assumed, first, that this is an injury to the estate of the claimant, and, second, that it is not an action to recover a penalty. The Supreme Court of the United States in the case of *Parsons* v. *Railway Company*, 167 U. S., 447, has dis-

tinctly decided that an action by a shipper to recover for the collection of a discriminative rate is in the nature of a penalty and the court held (page 460):

> "The only right of recovery given by the Interstate Commerce Act to the individual is to the 'person or persons injured thereby for the full amount of damages sustained in consequence of any of the violations of the provisions of this act.' "

The language immediately following indicates that the court is talking about a shipper when it uses the word "individual." Thus the opinion says, "If he had *shipped*" and "He did not *ship.*"

So also in the Darnell-Taenzer case (245 U. S., 531) the ruling of this Court that the measure of damages is the difference between the reasonable and unreasonable rates, and that such damage accrues to the shipper or consignee who pays the freight, and does not permit of the defense that as a matter of fact the shipper had suffered no damage because he had passed along the freight charge, clearly indicates that the Supreme Court regards this statute as one conferring a special right to an individual which is in the nature of a penalty and which can be collected only by the individual in privity with the carrier. When this situation is understood the inapplicability of the cases cited by counsel for Spiller (except the Edmunds case) is plain. Thus the case most relied upon by counsel and by the District Court is that of *Comegys* v. *Vasse*, 1 Pet. 193. This case must be carefully examined to show its inapplicability.

Vasse was an underwriter on boats and cargoes which were captured and carried into the ports of Spain and upon which he paid the losses to the owners who abandoned the ships and cargoes. Later Vasse became embarrassed and his creditors proceeded against him as a bankrupt under the Act of Congress of April 4, 1800.

An assignment in bankruptcy was made to Comegys *et al.* Vasse was discharged in 1802. In 1824 there were received by Comegys *et al.* from the United States $8,846.14, being the sum awarded by the Commissioners under the treaty with Spain on account of the captures and losses aforesaid.

Vasse then filed a bill to collect the money, and the important question was whether the bankruptcy proceedings of 1802 gave title to the assignee of the amount afterwards received on account of the capture of the vessels. That point was decided by Mr. Justice Story upon an interpretation of the Bankruptcy Act. The first point decided was that under the law of insurance where the owner of a boat abandons it he thereby renounces and yields up to the underwriter all his right, title and claims. The Court cites from opinions by Chief Justice Marshall and by Lord Hardwicke to this effect. The Court then (page 217) approaches the point, which was whether the vested right of Vasse to the compensation passed under the Bankruptcy Law to his assignees. In holding that it did the Court drew upon no general principles of law but confined itself to a discussion of *the particular language of the Bankruptcy Law, which requires the assignment of the property of a debtor to his creditors.* Section by section the Court examines the language and finally comes to that part of Section 5 which requires the trustee to take into his possession "all the estate, real and personal, of every nature and description, in law or equity." The Court having already decided, as before stated, that upon abandonment of the ship the right and title of the owner went to the insurer, it then held that that ship and the right to compensation for it would be considered as a part of the estate above described in Section 5, and that if a testator

had used similar language such property or the right to compensation would have passed under his will.

Now, Spiller's difficulty is that the Interstate Commerce Law does not use that language. But the Supreme Court in the Comegys case, having stated (p. 217) that the point was one of the greatest difficulty, then went on to examine further sections of the Bankruptcy Law to show that the bankrupt under that law must pass over even possibilities coupled with an interest and a number of things "in which he or she was in anywise interested" or "whereby such bankrupt or his or her family then hath, or may have, or expect any profit," etc. The Court pins to the last language to show that the Bankruptcy Act meant to assign not merely interests *in praesenti*, but also in the future.

Other sections are referred to by the Supreme Court and at the end of it all the Court simply held that the Bankruptcy Act passed by assignment the title of Vasse, the bankrupt, to his creditors. It was an assignment by operation of law and it required the language of seven or eight sections of the Bankruptcy Law to support the holding. And it was stated by Mr. Justice Story to be a point of great difficulty and not free from doubt by anyone who examined it.

The important thing to point out is that in the present case the Act to Regulate Commerce does not contain those seven or eight sections of the Bankruptcy Law which were necessary to support the assignment in the Comegys case.

The case of *Erwin* v. *United States*, 97 U. S., 369, is another based upon the Bankruptcy Law. In that case some cotton which was the property of the assignor was destroyed by the United States Government and he had a claim against the Government for the value of such

physical property destroyed. The Court held that such claim against the United States was the subject of assignment under the Bankruptcy Law. Of course there is no argument about that. There was a plain taking or destruction of the physical property of the owner.

The only case in all the books suggesting that an assignee can maintain an action of this kind is *Edmunds* v. *Illinois Central*, 80 Fed., 78, decided in 1897, nine years before the Act to Regulate Commerce was amended by the Hepburn Law empowering the Commission to prescribe maximum rates for the future. After the passage in 1906 of the Hepburn Amendment the Supreme Court decided that an action like that in *Edmunds* v. *Illinois Central* could not be maintained.

Texas, etc. v. *Abilene, etc.*, 204 U. S., 426.

Therefore, to-day the Edmunds case would be dismissed without trial.

Besides, the decision is not in harmony with the decisions of this Court cited by us.

In addition to all this, the Court relied upon a statute of the State of Iowa in sustaining the right of an assignee to sue in his own name, and conceded the force of the argument against assignability "if the assignment carried only a mere right to bring an action, and did not convey a right of property." The record in this case and the admissions of counsel for Spiller therein, as pointed out elsewhere in our brief, distinctly show that "the beneficial interest"—to quote the language of the District Judge in the Edmunds case—in the claims for reparation did not pass to Spiller as assignee and that no "right of property" was conveyed to him by such alleged assignments.

Rucker v. *Bolles*, 80 Fed., 504, is not in point. It was

decided by the Court of Appeals for the Eighth Circuit, and was not even referred to in its decision in this case as having any application.

The case of *Davis* v. *Railroad Company*, 25 Fed., 786, involved a damage to real property, which by the Kansas statute was made assignable.

As to the other authorities cited we can merely state that we can find no point in them.

On pages 90, 91, 92 and 93 the brief for Spiller cites authorities which have nothing to do with his case. His difficulty is that he failed to prove his assignments or that they vested in him any title, and as he has failed to show this fact, it is useless to cite authorities which are based upon the proof of such facts in given cases.

V.

MISCELLANEOUS COMMENT ON SPILLER'S BRIEF.

Some of the assignments of error in the brief for Spiller (pp. 48 *et seq.*) erroneously state the holding of the Circuit Court of Appeals and some have to do with questions not in the case. These tend to make an already confused and confusing record all the more so.

Thus, it cannot be told whether assignment V (p. 49) is intended as a predicate of error or whether it states a theory of counsel. At any rate, the question of the reasonableness of the rate was specifically not tried in the District Court (f. 212) and not passed upon in the Circuit Court of Appeals. As previously remarked, the trial Court ruled out exhibits offered by Spiller as "relating to the reduction of the rate and not to the subject of reparation." No error was assigned with respect to

this, and therefore it cannot be discussed here even if it were prejudicial, which it was not. Moreover, it was distinctly stated in the District Court (f. 357) that while the carriers were entitled to a trial *de novo* of the entire case, they would offer nothing respecting the reasonableness of the rate. The Commissioner treated the reparation hearing (p. 222) as "a new hearing."

Assignment VI is that the Circuit Court of Appeals erred in holding that a shipper cannot sue in a court of law where the Commission condemns a rate as unreasonable. The Court did not so hold. Moreover, no shipper is in this litigation.

The Circuit Court of Appeals did not hold, as is stated in assignment VIII, that it had the power to set aside an order of the Commission in a collateral proceeding. This was a direct proceeding brought according to statutory specifications upon an order made by the Commission. The carriers made the statutory defense.

The Circuit Court of Appeals did not hold (assignment IX, p. 50) that the carriers were not precluded in a collateral proceeding from claiming that the findings and order of the Commission were invalid when they had not petitioned for rehearing under Section 16-A of the Act. The Act does not require a petition for rehearing before an attack upon an order of the Commission.

Section 16-A merely says that "any party thereto *may* at any time make an application for rehearing," the purpose being that the Commission always retain control of the litigation and the power to change or modify its first order, more particularly with respect to matters "arising since the former hearing."

The case cited at page 102 of the brief for Spiller,

St. Louis, etc. v. *Samuels & Company,* 211 Fed., 588 (593), in no way supports his contention.

The provision of Section 16-A is permissive and not obligatory. Moreover, the carriers did not appeal to the United States District Court from the order of the Commission and hence any rule that may be applicable to a party appealing from an order or judgment would not apply to them. Even under the strict practice attending appeals in courts of law, which does not apply in the courts of the United States, where no motion for a new trial is necessary and where error cannot be predicated on the action of a trial court upon a motion for a new trial, a petition for rehearing is not necessary as precedent to a review of the record for the purpose of ascertaining, not the weight of any evidence, but whether the entire record was sufficeint to support the order or judgment:

> "While, as has been seen, evidence will not be examined upon appeal with a view to determining its weight and sufficiency to sustain a verdict, without a previous ruling by the trial court upon a motion for a new trial presenting that consideration, the question of the sufficiency of the evidence may nevertheless properly come before the Appellate Courts without there having been a motion for a new trial. The review in such case is not as to the weight of the evidence, but as to whether there is any legal evidence of probative value tending to support a given contention. A review of this character may be had upon the ruling of the trial court in directing or refusing to direct a verdict where exception is duly taken, although there has been no motion for a new trial."
>
> 4 Am. & Eng. Ann. Cases, 304.

Finally, this is not a collateral proceeding as stated in assignment of errors IX (p. 457), as the basis for the requirement of the carriers' applying for a rehearing

under Section 16-A before being permitted to defend against the reparation order because not supported by sufficient evidence. It is a direct proceeding in court upon such order brought by Spiller against the carriers and the only one provided by law where the order can be contested.

At page 6 of the brief for Spiller this statement is made:

> "None of the exhibits introduced before the Commission were introduced at the trial in the District Court, nor were any of the pleadings or petition for reparation filed before the Commission introduced at the trial of this case in the District Court."

If that were so Spiller, having made no objection in the trial court and having no cross error in the Circuit Court of Appeals, cannot discuss the matter now.

However, it is not so. The full record on reparation was introduced. Any petitions filed with the Commission asking for reparation, were not evidentiary.

At the beginning of the hearings on reparation, Commissioner Prouty said (p. 22), "We will try this as a new hearing."

When the case came on for trial in the District Court counsel for Spiller offered (f. 211) the original decision of the Commission and supplemental decisions and orders with respect to the reasonableness of the rates which had been reduced. This offer was objected to (f. 212) by counsel for the carriers—

> "Because no rate question is involved here, and the fact is set up in their petition that these orders were rendered and we have admitted that the Commission did reduce the rates and did declare the rates unreasonably high. * * * The offer therefore is immaterial and the decisions are incompetent and encumbering the record. They have no application to this secondary hearing on the award of reparation."

The court received Spiller's Exhibits 2, 3 and 4, all relating to the trial about the reasonableness of the rates, subject to the objections made; and, after taking the matter under advisement (f. 368), said that the "Exhibits 2, 3 and 4 of the plaintiff, which were received by the court under reserved ruling," are "ordered stricken from the record."

Finally, counsel for the carriers, instead of encumbering the record with all the sheets which had been brought before the Commission and checked by the carriers offered (f. 327) as Defendants' Exhibit 2 a sample sheet which had been furnished under agreement by counsel for Spiller, and it was thereupon stipulated that the sheet (reproduced in Spiller's brief opposite page 60) was the form on which all the exhibits before the Commission had been prepared. Therefore, with the certified copy of the reporter's transcript (f. 215) and a sheet showing the matter of the documentary evidence which had been offered as exhibits, the carriers placed before the District Court the entire record of the Commission with regard to reparation.

It seems unnecessary further to comment upon the propositions of the brief.

Conclusion.

In the light of the entire record, showing an utter absence of legal proof of Spiller's case, and in view of the provisions of the Interstate Commerce Act and of the decisions of this court construing the law, we respectfully submit that the judgment of the United States Circuit Court of Appeals should be affirmed.

Gardiner Lathrop,
T. J. Norton,
C. S. Burg,
James L. Coleman,
Attorneys for Defendants in Error.